

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to create and enact chapter 32-29.4 of the North Dakota Century Code,  
2 relating to adoption of the Uniform Family Law Arbitration Act.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 32-29.4 of the North Dakota Century Code is created and enacted as  
5 follows:

6 **32-29.4-01. Definitions.**

7 In this chapter:

- 8 1. "Arbitration agreement" means an agreement that subjects a family law dispute to  
9 arbitration.
- 10 2. "Arbitration organization" means an association, agency, board, commission, or other  
11 entity that is neutral and initiates, sponsors, or administers an arbitration or is involved  
12 in the selection of an arbitrator.
- 13 3. "Arbitrator" means an individual selected, alone or with others, to make an award in a  
14 family law dispute that is subject to an arbitration agreement.
- 15 4. "Child-related dispute" means a family law dispute regarding parenting time, or  
16 financial support regarding a child.
- 17 5. "Court" means the district court.
- 18 6. "Family law dispute" means a contested issue arising under the domestic relations law  
19 of this state.
- 20 7. "Party" means an individual who signs an arbitration agreement and whose rights will  
21 be determined by an award.
- 22 8. "Person" means an individual, estate, business or nonprofit entity, public corporation,  
23 government or governmental subdivision, agency, or instrumentality, or any other legal  
24 entity.

- 1       9. "Record", used as a noun, means information inscribed on a tangible medium or  
2       stored in an electronic or other medium and is retrievable in perceivable form.  
3       10. "Sign" means, with present intent to authenticate or adopt a record:  
4       a. To execute or adopt a tangible symbol; or  
5       b. To attach to or logically associate with the record an electronic symbol, sound, or  
6       process.  
7       11. "State" means a state of the United States, the District of Columbia, Puerto Rico, the  
8       United States Virgin Islands, or any territory or insular possession subject to the  
9       jurisdiction of the United States. The term includes a federally recognized Indian tribe.

10       **32-29.4-02. Scope.**

- 11       1. This chapter governs arbitration of a family law dispute.  
12       2. This chapter does not authorize an arbitrator to make an award that:  
13       a. Grants a legal separation, divorce, or annulment;  
14       b. Terminates parental rights;  
15       c. Grants an adoption or a guardianship of a child or incapacitated individual;  
16       d. Determines the status of dependency; or  
17       e. Determines a child-related dispute.

18       **32-29.4-03. Applicable law.**

- 19       1. Except as otherwise provided in this chapter, the law applicable to arbitration is  
20       chapter 32-29.3.  
21       2. In determining the merits of a family law dispute, an arbitrator shall apply the law of  
22       this state, including its choice of law rules.

23       **32-29.4-04. Arbitration agreement.**

- 24       1. An arbitration agreement must:  
25       a. Be in a record signed by the parties;  
26       b. Identify the arbitrator, an arbitration organization, or a method of selecting an  
27       arbitrator; and  
28       c. Identify the family law dispute the parties intend to arbitrate.  
29       2. An agreement in a record to arbitrate a family law dispute that arises between the  
30       parties before, at the time, or after the agreement is made is valid and enforceable as

1           any other contract and irrevocable except on a ground that exists at law or in equity for  
2           the revocation of a contract.

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

6           **32-29.4-05. Notice of arbitration.**

7           A party may initiate arbitration by giving notice to arbitrate to the other party in the manner  
8           specified in the arbitration agreement or, in the absence of a specified manner, under the law  
9           and procedural rules of this state other than this chapter governing contractual arbitration.

10          **32-29.4-06. Motion for judicial relief.**

11          1. A motion for judicial relief under this chapter must be made to the court in which a  
12          proceeding is pending involving a family law dispute subject to arbitration or, if no  
13          proceeding is pending, a court with jurisdiction over the parties and the subject matter.

14          2. On motion of a party, the court may compel arbitration if the parties have entered an  
15          arbitration agreement that complies with section 32-29.4-04 unless the court  
16          determines under section 32-29.4-11 the arbitration should not proceed.

17          3. On motion of a party, the court shall terminate arbitration if it determines:

18           a. The agreement to arbitrate is unenforceable;

19           b. The family law dispute is not subject to arbitration; or

20           c. Under section 32-29.4-11, the arbitration should not proceed.

21          4. Unless prohibited by an arbitration agreement, on motion of a party, the court may  
22          order consolidation of separate arbitrations involving the same parties and a common  
23          issue of law or fact if necessary for the fair and expeditious resolution of the family law  
24          dispute.

25          **32-29.4-07. Qualification and selection of arbitrator.**

26          1. Except as otherwise provided in subsection 2, unless waived in a record by the  
27          parties, an arbitrator must be:

28           a. An attorney in good standing admitted to practice or on inactive status or a judge  
29           on retired status in a state; and

30           b. Trained in identifying domestic violence and child abuse.

1       2. The identification in the arbitration agreement of an arbitrator, arbitration organization,  
2       or method of selection of the arbitrator controls.

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

5       **32-29.4-08. Disclosure by arbitrator - Disqualification.**

6       1. Before agreeing to serve as an arbitrator, an individual, after making reasonable  
7       inquiry, shall disclose to all parties any known fact a reasonable person would believe  
8       is likely to affect:

9       a. The impartiality of the arbitrator in the arbitration, including bias, a financial or  
10       personal interest in the outcome of the arbitration, or an existing or past  
11       relationship with a party, attorney representing a party, or witness; or

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

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

17       3. An objection to the selection or continued service of an arbitrator and a motion for a  
18       stay of arbitration and disqualification of the arbitrator must be made under the law  
19       and procedural rules of this state other than this chapter governing arbitrator  
20       disqualification.

21       4. If a disclosure required by subdivision a of subsection 1 or subsection 2 is not made,  
22       the court may:

23       a. On motion of a party not later than thirty days after the failure to disclose is  
24       known or by the exercise of reasonable care should have been known to the  
25       party, suspend the arbitration;

26       b. On timely motion of a party, vacate an award under subdivision b of subsection 1  
27       of section 32-29.4-18; or

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

1        5. If the parties agree to discharge an arbitrator or the arbitrator is disqualified, the  
2            parties by agreement may select a new arbitrator or request the court to select another  
3            arbitrator as provided in section 32-29.4-07.

4        **32-29.4-09. Party participation.**

5        1. A party may:

6            a. Be represented in an arbitration by an attorney;

7            b. Be accompanied by an individual who will not be called as a witness or act as an  
8            advocate; and

9            c. Participate in the arbitration to the full extent permitted under the law and  
10           procedural rules of this state other than this chapter governing a party's  
11           participation in contractual arbitration.

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

15        **32-29.4-10. Temporary order or award.**

16        1. Before an arbitrator is selected and able to act, on motion of a party, the court may  
17           enter a temporary order in accordance with rule 8.2 of the North Dakota Rules of  
18           Court.

19        2. After an arbitrator is selected:

20           a. The arbitrator may make a temporary award in accordance with rule 8.2 of the  
21           North Dakota Rules of Court; and

22           b. If the matter is urgent and the arbitrator is not able to act in a timely manner or  
23           provide an adequate remedy, on motion of a party, the court may enter a  
24           temporary order.

25        3. On motion of a party, before the court confirms a final award, the court under section  
26           32-29.4-15, 32-29.4-17, or 32-29.4-18 may confirm, correct, vacate, or amend a  
27           temporary award made under subdivision a of subsection 2.

28        4. On motion of a party, the court may enforce a subpoena or interim award issued by an  
29           arbitrator for the fair and expeditious disposition of the arbitration.

1       **32-29.4-11. Protection of party or child.**

- 2       1. In this section, "protection order" means an injunction or other order, issued under the  
3       domestic violence, family violence, or stalking laws of the issuing jurisdiction, to  
4       prevent an individual from engaging in a violent or threatening act against, harassment  
5       of, contact or communication with, or being in physical proximity to another individual  
6       who is a party or a child under the custodial responsibility of a party.
- 7       2. If a party is subject to a protection order or an arbitrator determines there is a  
8       reasonable basis to believe a party's safety or ability to participate effectively in  
9       arbitration is at risk, the arbitrator shall stay the arbitration and refer the parties to  
10      court. The arbitration may not proceed unless the party at risk affirms the arbitration  
11      agreement in a record and the court determines:
- 12      a. The affirmation is informed and voluntary;  
13      b. Arbitration is not inconsistent with the protection order; and  
14      c. Reasonable procedures are in place to protect the party from risk of harm,  
15      harassment, or intimidation.
- 16      3. An arbitrator may make a temporary award to protect a party or child from harm,  
17      harassment, or intimidation.
- 18      4. On motion of a party, the court may stay arbitration and review a determination or  
19      temporary award under this section.
- 20      5. This section supplements remedies available under law of this state other than this  
21      chapter for the protection of victims of domestic violence, family violence, stalking,  
22      harassment, or similar abuse.

23      **32-29.4-12. Powers and duties of arbitrator.**

- 24      1. An arbitrator shall conduct an arbitration in a manner the arbitrator considers  
25      appropriate for a fair and expeditious disposition of the dispute.
- 26      2. An arbitrator shall provide each party a right to be heard, to present evidence material  
27      to the family law dispute, and to cross-examine witnesses.
- 28      3. Unless the parties otherwise agree in a record, an arbitrator's powers include the  
29      power to:
- 30      a. Select the rules for conducting the arbitration;  
31      b. Hold conferences with the parties before a hearing;

- 1           c. Determine the date, time, and place of a hearing;
- 2           d. Require a party to provide:
  - 3           (1) A copy of a relevant court order;
  - 4           (2) Information required to be disclosed in a family law proceeding under law of  
5           this state other than this chapter; and
  - 6           (3) A proposed award that addresses each issue in arbitration;
- 7           e. Appoint a private expert at the expense of the parties;
- 8           f. Administer an oath or affirmation and issue a subpoena for the attendance of a  
9           witness or the production of documents and other evidence at a hearing;
- 10          g. Compel discovery concerning the family law dispute and determine the date,  
11          time, and place of discovery;
- 12          h. Determine the admissibility and weight of evidence;
- 13          i. Permit deposition of a witness for use as evidence at a hearing;
- 14          j. For good cause, prohibit a party from disclosing information;
- 15          k. Impose a procedure to protect a party or child from risk of harm, harassment, or  
16          intimidation;
- 17          l. Allocate arbitration fees, attorney's fees, expert-witness fees, and other costs to  
18          the parties; and
- 19          m. Impose a sanction on a party for bad faith or misconduct during the arbitration  
20          according to standards governing imposition of a sanction for litigant misconduct  
21          in a family law proceeding.
- 22          4. An arbitrator may not allow ex parte communication except to the extent allowed in a  
23          family law proceeding for communication with a judge.

24          **32-29.4-13. Recording of hearing.**

25          Except as otherwise required by law of this state other than this chapter, an arbitration  
26          hearing need not be recorded unless required by the arbitrator, provided by the arbitration  
27          agreement, or requested by a party.

28          **32-29.4-14. Award.**

- 29          1. An arbitrator shall make an award in a record, dated and signed by the arbitrator. The  
30          arbitrator shall give notice of the award to each party by a method agreed on by the

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

3 2. The award under this chapter must state the reasons on which it is based unless  
4 otherwise agreed by the parties.

5 3. An award under this chapter is not enforceable as a judgment until confirmed under  
6 section 32-29.4-15.

7 **32-29.4-15. Confirmation of award.**

8 1. After an arbitrator gives notice under subsection 1 of section 32-29.4-14 of an award,  
9 including an award corrected under 32-29.4-16, a party may move the court for an  
10 order confirming the award.

11 2. The court shall confirm an award under this chapter if:

12 a. The parties agree in a record to confirmation; or

13 b. The time has expired for making a motion, and no motion is pending, under  
14 section 32-29.4-17 or 32-29.4-18.

15 3. On confirmation, an award under this chapter is enforceable as a judgment.

16 **32-29.4-16. Correction by arbitrator of unconfirmed award.**

17 On motion of a party made not later than thirty days after an arbitrator gives notice under  
18 subsection 1 of section 32-29.4-14 of an award, the arbitrator may correct the award:

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

21 2. If the award is imperfect in a matter of form not affecting the merits on the issues  
22 submitted; or

23 3. To clarify the award.

24 **32-29.4-17. Correction by court of unconfirmed award.**

25 1. On motion of a party made not later than ninety days after an arbitrator gives notice  
26 under subsection 1 of section 32-29.4-14 of an award, including an award corrected  
27 under section 32-29.4-16, the court shall correct the award if:

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

30 b. The award is imperfect in a matter of form not affecting the merits of the issues  
31 submitted; or

- 1           c. The arbitrator made an award on a dispute not submitted to the arbitrator and the  
2           award may be corrected without affecting the merits of the issues submitted.  
3        2. A motion under this section to correct an award may be joined with a motion to vacate  
4           or amend the award under section 32-29.4-18.  
5        3. Unless a motion under section 32-29.4-18 is pending, the court may confirm a  
6           corrected award under section 32-29.4-15.

7        **32-29.4-18. Vacation or amendment by court of unconfirmed award.**

- 8        1. On motion of a party, the court shall vacate an unconfirmed award if the moving party  
9           establishes that:  
10       a. The award was procured by corruption, fraud, or other undue means;  
11       b. There was:  
12           (1) Evident partiality by the arbitrator;  
13           (2) Corruption by the arbitrator; or  
14           (3) Misconduct by the arbitrator substantially prejudicing the rights of a party;  
15       c. The arbitrator refused to postpone a hearing on showing of sufficient cause for  
16           postponement, refused to consider evidence material to the controversy, or  
17           otherwise conducted the hearing contrary to section 32-29.4-12, so as to  
18           prejudice substantially the rights of a party;  
19       d. The arbitrator exceeded the arbitrator's powers;  
20       e. No arbitration agreement exists, unless the moving party participated in the  
21           arbitration without making a motion under section 32-29.4-06 not later than the  
22           beginning of the first arbitration hearing; or  
23       f. The arbitration was conducted without proper notice under section 32-29.4-05 of  
24           the initiation of arbitration, so as to prejudice substantially the rights of a party.  
25       2. A motion under this section to vacate or amend an award must be filed not later than  
26           ninety days:  
27       a. After an arbitrator gives the party filing the motion notice of the award or a  
28           corrected award; or  
29       b. For a motion under subdivision a of subsection 1, after the ground of corruption,  
30           fraud, or other undue means is known or by the exercise of reasonable care  
31           should have been known to the party filing the motion.

- 1       3. If the court under this section vacates an award for a reason other than the absence of  
2       an enforceable arbitration agreement, the court may order a rehearing before an  
3       arbitrator. If the reason for vacating the award is the award was procured by  
4       corruption, fraud, or other undue means or there was evident partiality, corruption, or  
5       misconduct by the arbitrator, the rehearing must be before another arbitrator.  
6       4. If the court under this section denies a motion to vacate or amend an award, the court  
7       may confirm the award under section 32-29.4-15 unless a motion is pending under  
8       section 32-29.4-17.

9       **32-29.4-19. Clarification of confirmed award.**

10       If the meaning or effect of an award confirmed under section 32-29.4-15 is in dispute, the  
11 parties may:

- 12       1. Agree to arbitrate the dispute before the original arbitrator or another arbitrator; or  
13       2. Proceed in court under law of this state other than this chapter governing clarification  
14       of a judgment in a family law proceeding.

15       **32-29.4-20. Judgment on award.**

- 16       1. On granting an order confirming, vacating without directing a rehearing, or amending  
17       an award under this chapter, the court shall enter judgment in conformity with the  
18       order.  
19       2. On motion of a party, the court may order a document or part of the arbitration record  
20       be sealed or redacted to prevent public disclosure of all or part of the record or award  
21       to the extent permitted under law of this state other than this chapter.

22       **32-29.4-21. Modification of confirmed award or judgment.**

23       If a party requests under law of this state other than this chapter a modification of an award  
24 confirmed under section 32-29.4-15 or judgment on the award based on a fact occurring after  
25 confirmation:

- 26       1. The parties shall proceed under the dispute-resolution method specified in the award  
27       or judgment; or  
28       2. If the award or judgment does not specify a dispute-resolution method, the parties  
29       may:  
30       a. Agree to arbitrate the modification before the original arbitrator or another  
31       arbitrator; or

- 1            b. Absent agreement proceed under law of this state other than this chapter  
2            governing modification of a judgment in a family law proceeding.

3            **32-29.4-22. Enforcement of confirmed award.**

- 4            1. The court shall enforce an award confirmed under section 32-29.4-15, including a  
5            temporary award, in the manner and to the same extent as any other order or  
6            judgment of a court.  
7            2. The court shall enforce an arbitration award in a family law dispute confirmed by a  
8            court in another state in the manner and to the same extent as any other order or  
9            judgment from another state.

10          **32-29.4-23. Appeal.**

- 11          1. An appeal may be taken under this chapter from:  
12            a. An order granting or denying a motion to compel arbitration;  
13            b. An order granting or denying a motion to stay arbitration;  
14            c. An order confirming or denying confirmation of an award;  
15            d. An order correcting an award;  
16            e. An order vacating an award without directing a rehearing; or  
17            f. A final judgment.  
18          2. An appeal under this section may be taken as from an order or a judgment in a civil  
19          action.

20          **32-29.4-24. Immunity of arbitrator.**

- 21          1. An arbitrator or arbitration organization acting in that capacity in a family law dispute is  
22          immune from civil liability to the same extent as a judge of a court of this state acting in  
23          a judicial capacity.  
24          2. The immunity provided by this section supplements any immunity under law of this  
25          state other than this chapter.  
26          3. An arbitrator's failure to make a disclosure required by section 32-29.4-08 does not  
27          cause the arbitrator to lose immunity under this section.  
28          4. An arbitrator is not competent to testify, and may not be required to produce records,  
29          in a judicial, administrative, or similar proceeding about a statement, conduct,  
30          decision, or ruling occurring during an arbitration, to the same extent as a judge of a  
31          court of this state acting in a judicial capacity. This section does not apply:

1           a. To the extent disclosure is necessary to determine a claim by the arbitrator or  
2           arbitration organization against a party to the arbitration; or

3           b. To a hearing on a motion under subdivision a or b of subsection 1 of section  
4           32-29.4-18 to vacate an award, if there is prima facie evidence a ground for  
5           vacating the award exists.

6           5. If a person commences a civil action against an arbitrator arising from the services of  
7           the arbitrator or seeks to compel the arbitrator to testify or produce records in violation  
8           of subsection 4 and the court determines the arbitrator is immune from civil liability or  
9           is not competent to testify or required to produce the records, the court shall award the  
10          arbitrator reasonable attorney's fees, costs, and reasonable expenses of litigation.

11          **32-29.4-25. Relation to electronic signatures in global and national commerce act.**

12          This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and  
13          National Commerce Act [Pub. L. 106-229; 114 Stat. 464; 15 U.S.C. 7001 et seq.], but does not  
14          modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)], or authorize electronic  
15          delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

16          **32-29.4-26. Transitional provision.**

17          This chapter applies to arbitration of a family law dispute under an arbitration agreement  
18          made after July 31, 2019. If an arbitration agreement was made before August 1, 2019, the  
19          parties may agree in a record this chapter applies to the arbitration.