

2019 SENATE JUDICIARY

SB 2063

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2063
1/9/2019
#30572 (19:13)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

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

Minutes:

2 Attachments

Chair Larson opened the hearing on SB 2063.

Gail Hagerty, Uniform Law Commissioner and District Judge for the South Central Judicial District, testifies in favor of the bill (see attachment #1)

(11) Senator Myrdal: Page 2 of your testimony you mention child-related disputes. Why did we decide to exclude that?

Judge Hagerty: As drafted the act requires different things for deciding child-related disputes. The review standard is such that the court would probably have to redo it anyways so there wouldn't be any great savings in time. We think the District Court Judges who have dealt with these issues over a period of years would be better able to deal with the issues with regard to parenting and child support. We didn't feel that was a tool that would be particularly helpful. We felt that that should be left where it is and not moved to an arbitration. I know the family law attorneys in the state particularly in the Fargo area who would urge that the arbitration statute include those disputes. Representative Klemin chairs our state commission. He put the issue before all of us and there was a vote.

Vice Chairman Dwyer: Do we have any laws in the books now regarding arbitration?

Judge Hagerty: Yes, we do have a Uniform act with regard to arbitration and this makes reference to it in the body of the act.

(13:15) Megan Carmichael, UND Law School Student, testifies in favor of the bill.

Carmichael: I am currently interning for the State Bar Association of North Dakota. My Executive Director Tony Weiler is away testifying on another bill and has asked me to step in. We have a history at the State Bar Association of support Uniform Law, and we encourage a do pass on this bill.

(14) Parrell Grossman, Member of ND Uniform Law Commission, testifies in favor of bill
Grossman: I am simply here to endorse this legislation and ask you to give it a favorable do pass. Based on my own experiences this is a very thorough vetting process to sit through these meetings as they parse these word by word, argue and debate. I think this is a great product and I fully endorse it.

Chair Larson: I am not an attorney and as a lay person reading through this with the Judge's explanations, I felt like I understood what was being said. I appreciate this.

Grossman: Thank you, this is due in large part by Judge Hagerty.

Senator Myrdal: How many members and how often do they meet?

Grossman: I think it's 9 days from start to finish.

Judge Hagerty: North Dakota has 9 or 10 Uniform Law Commissioners including representatives of the House and the Senate. The Governor appoints a Judge. We have life members, people who have been members for at least 20 years, and I'm honored to be one. We meet for an annual meeting every summer, at least 7 or 8 days, and we usually read 13 acts during that period of time- some for the first time and some for the second time. Then after we've read everything for a second time, there's a vote by the states. Each state has an opportunity to vote on whether the act is to be a uniform act or not. There are generally 250-300 commissioners attending each summer. When we do this reading, it's not with a small group, it's with the whole group and everyone is invited to get up, make comments and ask questions. It's an interesting process that you must get tuned into.

Vice Chairman Dwyer: How many states have adopted this particular Uniform Act?

Judge Hagerty: It's a relatively new act. Two states- one by rule and one by statute.

Grossman: It's a real chance to take leadership and be one of the states to adopt it.

Chair Larson: But all of the states agreed that they were going to take it to their state for adoption.

Grossman: Almost all. Oftentimes there are outliers.

Senator Myrdal: Moved a Do Pass

Senator Bakke: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent. Motion carries.

Senator Bakke will carry the bill.

Further information was provided by Judge Hagerty regarding the Uniform Family Law Arbitration Act (see attachment #2).

REPORT OF STANDING COMMITTEE

SB 2063: Judiciary Committee (Sen. D. Larson, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2063 was placed on the
Eleventh order on the calendar.

2019 HOUSE JUDICIARY

SB 2063

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2063
3/5/2019
33225

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to adoption of the Uniform Family Law Arbitration Act.

Minutes:

1

Chairman Koppelman: Opened the hearing on SB 2063.

Judge Gail Hagerty, Uniform Law Commissioner and District Judge for the South Central Judicial District: (Attachment #1) Read Testimony. Stopped 12:11

Vice Chairman Karls: So this deals only with the division of property. Not child custody?

Judge Hagerty: Yes, that is correct that this has nothing to do with regard to parenting.

Vice Chairman Karls: So that step is done by the judge only? That is not subject to arbitration and mediation?

Judge Hagerty: It is subject to mediation and mediation is provided through the supreme court in all of the cases that involve parenting time. Arbitration would not be an available tool to be used. Mediation allows parties to reach an agreement but if they don't reach an agreement the mediator cannot force one on them. The mediator doesn't make decisions, the mediator just helps them communicate and try to reach a decision.

Rep. Rick Becker: I am looking at Section 23; appeal. Do I understand correctly if you choose to go through an arbitrator, the process is the same? You don't go to district and then supreme court you just go straight to the supreme court?

Judge Hagerty: You might ask to have the arbitration set aside in the district court if the arbitration is confirmed by the district court, then the appeal is directly to the supreme court.

Rep. Rick Becker: So the opportunity exists, and the arbitrator comes up with the decision. One party heartily disagrees, then they have the opportunity and the time frame in which they can express their disagreement and it goes to the district court.

Judge Hagerty: The only grounds in which you can object is if there is corruption or the arbitrator wasn't impartial. It is not result oriented it is just the only thing that you can object to is the process. It would have to be something like the arbitrator made a decision that was grossly contrary to the evidence because the arbitrator was not fair and impartial.

Rep. Rick Becker: This arbitration arrangement fully supplants the district court for the purpose of family law property and spousal support?

Judge Hagerty: This party's agreed to that and if we go to arbitration and if the arbitration award is confirmed, it takes the place of the district court judgement and that's what the appeal is from.

Rep. Paur: Property means real and personal?

Judge Hagerty: Yes.

Chairman K. Koppelman: What has happened now with arbitration?

Judge Hagerty: There is nothing that prohibits parties from arbitrating decisions with regard to properties. There isn't a framework laid out for that. Mediation is favored and has been encouraged to the extent that the supreme court provides for six mediation sessions for parents when there are child related disputes. That however doesn't cover their property disputes.

Chairman K. Koppelman: If this passes is it your opinion or expectation that cases would move away from mediation and more arbitration would occur?

Judge Hagerty: Not at all. Mediation will still be the dispute resolution option for people that have child related disputes. This is another tool but it is going to deal with something that isn't mediated at this time.

Chairman K. Koppelman: Why are property issues not mediated?

Judge Hagerty: It is because mediation is provided by the state.

Rep. Jones: On Section 14; I assume the parties agree as to what they are going to do and then somewhere down the road they decide to change their minds then this has to go before a judge and he verifies that everything is done properly and if they say yes, it was done properly then it can be enforced as a judgement?

Judge Hagerty: An arbitration award doesn't have the effect of a court order, it is just an arbitration award. Routinely those awards will be brought to the court and they will ask the court to confirm the awards just so the parties can move forward. There doesn't have to be a dispute before that happens that just regularly happens.

Rep. Jones: How often do they go through arbitration and it fades away.

Judge Hagerty: I have had one case in my 20 years as a district judge where an arbitration award was disputed. Then it was confirmed and went to the supreme court.

Rep. Rick Becker: What is the advantage to the two parties?

Judge Hagerty: If you wanted to put a 3or4 day trial on my calendar, you might be looking at late 2020. The advantage is you can get the issue resolved more quickly.

Chairman K. Koppelman: Where is reality on arbitration when some say that it is costly and others say it is not costly.

Judge Hagerty: Nobody has to arbitrate. They might choose to wait and go to district court. It is a completely optional tool. Nobody is forced to anything.

Chairman K. Koppelman: Section 6; how does that work when that is all done?

Judge Hagerty: This is before the arbitration begins. The judge would have to look at the contract they entered into and the judge might have to make a decision there.

Chairman K. Koppelman: Section 5 is notice; where does that happen?

Judge Hagerty: There has been an agreement to arbitrate, then the dispute comes along and one of the parties says okay I am giving you notice that I want to arbitrate this dispute.

Rep. Satrom: Has this been used a lot around the country?

Judge Hagerty: We are probably in the middle of the pack. I think it is being done.

Rep. Satrom: So you are part of the commission that put this together. Do you have any issues with this?

Judge Hagerty: I think this is a very good act. There is nothing I would change in it.

Vice Chairman Karls: What happens when the parties maybe weren't married and there are children involved and property? Whose law of arbitration prevails when they could be in different states?

Judge Hagerty: I don't think it could be arbitrated then. We are currently drafting a new act. It is called the Economic Rights of Non Married Cohabitants, which should be ready in 3 or 4 years, and then I might know the answer.

Rep. Simons: Where would this be used?

Judge Hagerty: It may be parties have been married 30 years and they have developed a business and they also owned farm property and some minerals, now they are at a point where there would be an equitable distribution of their property and they may choose to arbitrate because they might prefer an arbitrator with expertise in land values or someone

who would have significant knowledge of the value minerals, so they might choose to arbitrate rather than waiting for a court date.

Chairman K. Koppelman: Would this typically be used with cases like you just described or a case where a family does have young children might opt for this option.

Judge Hagerty: Generally child support is done at the outset so there isn't a lot of time there.

Chairman K. Koppelman: If there is a couple that agrees on everything could they mediate themselves?

Judge Hagerty: Yes, people do that and it is quite a gift to their children.

Chairman K. Koppelman: We encouraged more mediation because of our adversarial system and the courts.

Judge Hagerty: When we do try a parenting case you have to have a strongly worded decision or you get overturned by the Supreme Court.

Chairman K. Koppelman: Are we going to see prenuptial agreements because of this?

Judge Hagerty: I don't think so.

Chairman K. Koppelman: With the uniform laws, what are the benefits of these laws from state to state? In this case where one parent lives in another state wouldn't it be the in the state where the divorce is filed where the arbitration is done, is going to rule and if that is the case why is uniformity important here?

Judge Hagerty: If parties enter into an agreement here in North Dakota and later move, it is predictable what the result will be at the laws of uniformity between the states.

Chairman K. Koppelman: If they later move, it wouldn't affect the prior arbitration and court action on their divorce would it?

Judge Hagerty: It allows predictability for people who move between states.

Megan Carmichael, State Bar Association: The vetting process for uniform laws is very thorough and we have a history of supporting uniform laws for the state bar association and that is why we encourage a Do Pass for this bill.

Opposition :None

Neutral

Hearing closed.

Rep. Roers Jones: Motion to **Do Pass.**

Rep. Karls: Second.

Roll Call Vote Yes 13 No 0 Absent 1

Rep. Roers Jones is the carrier.

Date: 3-5-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES** *SB2063*

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Roers Jones Seconded By Rep. Karls

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Buffalo	✓	
Vice Chairman Karls	✓		Rep. Karla Rose Hanson	✓	
Rep. Becker	✓				
Rep. Terry Jones	✓				
Rep. Magrum	✓				
Rep. McWilliams	✓				
Rep. B. Paulson	✓				
Rep. Paur	✓				
Rep. Roers Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Roers Jones

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2063: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2063 was placed on the
Fourteenth order on the calendar.

2019 TESTIMONY

SB 2063

**Testimony in Support of SB 2063
Uniform Family Law Arbitration Act
before the Senate Judiciary Committee
by Gail Hagerty
January 9, 2010**

Chair Larson, Members of the Committee: I am Gail Hagerty, a uniform law commissioner and district judge for the South Central Judicial District. I'm here today to testify in support of the Uniform Family Law Arbitration Act. The uniform law process is a long process. Acts are drafted over a period of years. They are read line-by-line and annual meetings of the Uniform Law Commission at least two times before they are voted on for approval by the full Commission. I was able to serve on the drafting committee for this act and to work with uniform law commissioners from around the nation and experts with an interest in this area of the law.

This act provides a tool which parties may use to resolve a dispute rather than having it resolved through a court trial. During arbitration, a neutral third party, the arbitrator, hears arguments from the parties, evaluates evidence, and makes a decision on a dispute. Arbitration is commonly used in the commercial world, and has recently begun to gain popularity in the family law area.

Why would parties want to have the option to arbitrate in family law matters? The parties' ability to select the decision-maker is a key attraction of arbitration over litigation. The choice of arbitrator is often shaped by the type of dispute. For example, a lawyer with experience in real estate appraisals might be an optimal decision-maker for couples disputing lands held as marital property.

Because arbitration can move forward without regard to judicial calendars, it usually reaches finality more quickly than litigation. For that reason, it also is touted as being less expensive than litigation, even taking into account the responsibility of the parties to pay the

#1
SB 2063
1/9

arbitrator's fee. As the United States Supreme Court has recognized, "[i]n bilateral arbitration, parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes." **Stolt-Nielsen S.A. v. Animal Feeds Int'l Corp.**, 559 U.S. 662, 685 (2010).

As presented in this legislation, arbitration is limited to property division disputes and will not be available to resolve child-related disputes. Child-related disputes are defined as family law disputes regarding parenting time or financial support regarding a child. The Act was drafted to allow states to choose whether or not to include child-related disputes, and North Dakota's uniform law commissioners opted to have this drafted to exclude child-related disputes.

This act is based, in part, on existing law concerning arbitration. The provisions concerning arbitrator disclosure, award, appeals, and arbitrator immunity are drawn from existing law. There are some key provisions which apply in family law disputes but not in traditional commercial disputes, and those provisions are included in this act.

Section 1 provides definitions used throughout the act.

Section 2 deals with the scope of the act. The act does not authorize an arbitrator to grant a divorce, terminate parental rights, grant adoption or guardianship, deal with issues of abuse or neglect, or determine a child-related dispute.

Section 3 refers to North Dakota's arbitration statutes and requires arbitrators to apply North Dakota family law and choice of law provisions.

Section 4 details the requirements for an arbitration agreement. It must be in a record signed by the parties and identify the arbitrator and the dispute to be arbitrated. Courts would decide disputes concerning the enforceability of arbitration agreements.

Section 5 provides for notice of initiation of arbitration.

Section 6 provides for motions for judicial relief in cases where a party seeks to have the court compel arbitration, argues arbitration should not proceed, or argues that arbitration should be terminated. The section also allows consolidation of arbitrations.

Section 7 deals with qualification and selection of an arbitrator. It requires that the arbitrator be an attorney or a retired judge. It also requires training in identifying domestic violence and child abuse. If parties cannot agree on selection of an arbitrator, the court shall select the arbitrator.

Section 8 deals with the requirement that an arbitrator disqualify himself or herself if there are factors which would affect impartiality or the arbitrator's ability to make a timely award. The duty to disclose continues throughout the proceeding. The section also provides a remedy if appropriate disclosures are not made.

Section 9 sets out rules about how parties participate in arbitration. Parties may be represented by an attorney and may be accompanied by an individual who will not be a witness or act as an advocate.

Section 10 allows for a temporary award or order, much like what might occur in advance of trial in a court proceeding.

Section 11 provides protection for parties if there is a risk to safety or the ability to participate effectively.

Section 12 sets out the powers and duties of the arbitrator. It requires the arbitrator to conduct the arbitration in a fair and expeditious manner and allow the parties to be heard. It gives the arbitrator the same type of powers a judge would have in presiding over a dispute.

Section 13 indicates that hearings need not be recorded unless required by the arbitrator or provided for in the arbitration agreement or requested by a party.

Section 14 requires the arbitrator to make an award in a record which is dated and signed. Parties must be notified of the award. Awards cannot be enforced as a judgment until confirmed by a judge.

Section 15 sets out the court's responsibilities in confirming awards.

Section 16 allows an arbitrator to correct an award if it has not yet been confirmed.

Section 17 allows a court to correct awards.

Section 18 provides for unconfirmed awards to be vacated or amended if a party establishes such things as that the arbitrator was partial or corrupt or engaged in misconduct. The section provides the procedural requirements for parties seeking to have an award vacated or amended.

Section 19 allows for clarification of an award.

Section 20 directs a court to enter judgment in conformity with an order confirming or vacating an award.

Section 21 sets out procedures for modification of a confirmed award.

Section 22 allows for enforcement of a confirmed award. Such an award has the same effect as any other order or judgment of the court.

Section 23 allows appeals in the same manner as an order or judgment in a civil action is appealed.

Section 24 provides immunity for arbitrators in family law disputes just as immunity is provided for arbitrators in commercial disputes.

I urge a "do pass" recommendation on this legislation. It simply provides another tool which may be useful to family law attorneys while providing direction for attorneys, arbitrators, and courts.



Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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2
SB 2063
1/9

WHY YOUR STATE SHOULD ADOPT THE UNIFORM FAMILY LAW ARBITRATION ACT (2016)

The Uniform Family Law Arbitration Act (UFLAA) provides necessary guidelines for the arbitration of family law matters. As popularity grows for this form of alternative dispute resolution, enacting the UFLAA ensures predictability and consistency. Some features of the UFLAA include:

- ***The UFLAA offers an efficient alternative for the resolution of family law disputes.*** The Act gives parties a private, efficient method to solve family law problems. The UFLAA also gives parties control over selection of their arbitrator, and thus, more control over the timing of their dispute resolution process.
- ***The UFLAA seamlessly integrates the state's existing contractual arbitration law.*** The Act looks to the state's existing statutory law and procedural rules for contractual arbitration to fill in gaps not covered by the UFLAA.
- ***The UFLAA guards the role of the courts with respect to children.*** Arbitration awards regarding child custody or child support cannot be confirmed unless the court finds that the award complies with applicable law and is in the best interests of the child. If the parties are arbitrating a child-related dispute under the Act and the arbitrator has a reasonable basis to believe the child is subject to abuse or neglect, then the arbitrator ends the arbitration, and the matter will be sent to the court for resolution.
- ***The UFLAA protects victims of domestic violence.*** The Act provides safeguards to ensure that one party to the arbitration will not intimidate or overpower another. For example, a party to the arbitration process may be accompanied by a friend or supporter who will not be called as a witness or act as an advocate. All arbitrators must also be attorneys with domestic violence training. If the arbitrator detects domestic violence, the arbitrator will stay the arbitration and refer the parties to court.
- ***The UFLAA addresses post-decree modifications.*** The Act allows a party to request to modify an award or judgment after it has been confirmed by the court. The modification must be based on facts occurring after confirmation and may be resolved judicially or, if the parties agree, by arbitration.

For more information about the UFLAA, please contact ULC Legislative Counsel Kaitlin Wolff at (312) 450-6615 or kwolff@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.



THE UNIFORM FAMILY LAW ARBITRATION ACT

- A Summary -

2
SB 2063
1/9

The Uniform Family Law Arbitration Act (UFLAA) creates a statutory scheme for the arbitration of family law disputes. Arbitration is a private process that parties may use to resolve a dispute rather than going to court. During an arbitration, a neutral third party, the arbitrator, hears arguments from the parties, evaluates evidence, and makes a decision on their dispute. Although arbitration has long been used in the commercial context, it has recently begun to gain popularity in the family law sphere.

Under the UFLAA, a “family law dispute” is a contested issue arising under the state’s family or domestic relations law. Family law disputes typically include disagreements about marital property, spousal support, child custody, and child support.

Under the Act, an arbitrator may not:

- grant a divorce;
- terminate parental rights;
- grant an adoption or guardianship of a child or incapacitated person; or
- determine the status of a child in need of protection.

The Act sets out arbitration procedures chronologically, from defining an arbitration agreement to providing standards for vacating a confirmed award. Many of the provisions of the UFLAA will be familiar to arbitrators and practitioners in the dispute resolution field. This is because the UFLAA is based in part on the Uniform Arbitration Act (1955) and Revised Uniform Arbitration Act (2000). The UFLAA’s provisions for arbitrator disclosure, award, appeals, and arbitrator immunity, among others, are drawn substantially from these earlier uniform acts.

Since family law disputes are different from traditional commercial disputes, however, the UFLAA contains some key provisions that do not appear in the Uniform Arbitration Act or Revised Uniform Arbitration Act. Many of these differences have to do with protecting vulnerable individuals during the arbitration process, such as children and victims of domestic violence. For instance, unless waived by the parties, the UFLAA requires arbitrators to be trained in detecting domestic violence and child abuse before arbitrating a family law dispute. If the arbitrator detects abuse, the arbitrator must stay the arbitration and refer the dispute to court. Likewise, if a party is subject to a protection order, the dispute will be referred to court for resolution.

Importantly, the UFLAA requires close judicial review of arbitration awards determining child-related issues. While an award regarding property or spousal support is subject to limited judicial review, a child-related award may not be confirmed by a court unless the court finds that the award complies with applicable law and is in the best interests of the child. Also, de novo review of child-related awards is a bracketed alternative that a state can choose to enact. In

addition, some states may want to exclude child-related disputes from arbitration altogether, and the Act provides an opt-out alternative for that purpose.

Another unique provision of the UFLAA relates to agreements to arbitrate a dispute that may arise in the future (often referred to as “pre-dispute agreements”). Pre-dispute agreements are generally permissible under the UFLAA, in accordance with the UAA and the RUAA. If parties agree to arbitrate a future child-related dispute, however, then the parties must affirm the agreement to arbitrate at the time of the dispute before proceeding to arbitration.

After the court confirms an award, a party may request a modification under state law governing post-decree modifications. If the parties agree, modification actions can be resolved by arbitration.

The UFLAA is an overlay statute meant to work together with the state’s existing choice-of-law rules and contractual arbitration law. It provides a comprehensive, clear framework for the arbitration of family law disputes, and should be enacted in every state.

For more information about the UFLAA, please contact ULC Legislative Counsel Kaitlin Wolff at (312) 450-6615 or kwolff@uniformlaws.org.

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P.1

**Testimony in Support of SB 2063
Uniform Family Law Arbitration Act
before the House Judiciary Committee
by Gail Hagerty
March 5, 2019**

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#1
SB 2013
3-5-19
P. 2

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#1
582063
3-5-19
P.3

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P.4

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#1
582063
3-5-19
P. 5

THE UNIFORM FAMILY LAW ARBITRATION ACT

- A Summary -

The Uniform Family Law Arbitration Act (UFLAA) creates a statutory scheme for the arbitration of family law disputes. Arbitration is a private process that parties may use to resolve a dispute rather than going to court. During an arbitration, a neutral third party, the arbitrator, hears arguments from the parties, evaluates evidence, and makes a decision on their dispute. Although arbitration has long been used in the commercial context, it has recently begun to gain popularity in the family law sphere.

Under the UFLAA, a “family law dispute” is a contested issue arising under the state’s family or domestic relations law. Family law disputes typically include disagreements about marital property, spousal support, child custody, and child support.

Under the Act, an arbitrator may not:

- grant a divorce;
- terminate parental rights;
- grant an adoption or guardianship of a child or incapacitated person; or
- determine the status of a child in need of protection.

The Act sets out arbitration procedures chronologically, from defining an arbitration agreement to providing standards for vacating a confirmed award. Many of the provisions of the UFLAA will be familiar to arbitrators and practitioners in the dispute resolution field. This is because the UFLAA is based in part on the Uniform Arbitration Act (1955) and Revised Uniform Arbitration Act (2000). The UFLAA’s provisions for arbitrator disclosure, award, appeals, and arbitrator immunity, among others, are drawn substantially from these earlier uniform acts.

Since family law disputes are different from traditional commercial disputes, however, the UFLAA contains some key provisions that do not appear in the Uniform Arbitration Act or Revised Uniform Arbitration Act. Many of these differences have to do with protecting vulnerable individuals during the arbitration process, such as children and victims of domestic violence. For instance, unless waived by the parties, the UFLAA requires arbitrators to be trained in detecting domestic violence and child abuse before arbitrating a family law dispute. If the arbitrator detects abuse, the arbitrator must stay the arbitration and refer the dispute to court. Likewise, if a party is subject to a protection order, the dispute will be referred to court for resolution.

Importantly, the UFLAA requires close judicial review of arbitration awards determining child-related issues. While an award regarding property or spousal support is subject to limited judicial review, a child-related award may not be confirmed by a court unless the court finds that the award complies with applicable law and is in the best interests of the child. Also, de novo review of child-related awards is a bracketed alternative that a state can choose to enact. In

#1
SB2023
3-5-19
P. 6

addition, some states may want to exclude child-related disputes from arbitration altogether, and the Act provides an opt-out alternative for that purpose.

Another unique provision of the UFLAA relates to agreements to arbitrate a dispute that may arise in the future (often referred to as “pre-dispute agreements”). Pre-dispute agreements are generally permissible under the UFLAA, in accordance with the UAA and the RUAA. If parties agree to arbitrate a future child-related dispute, however, then the parties must affirm the agreement to arbitrate at the time of the dispute before proceeding to arbitration.

After the court confirms an award, a party may request a modification under state law governing post-decree modifications. If the parties agree, modification actions can be resolved by arbitration.

The UFLAA is an overlay statute meant to work together with the state’s existing choice-of-law rules and contractual arbitration law. It provides a comprehensive, clear framework for the arbitration of family law disputes, and should be enacted in every state.

For more information about the UFLAA, please contact ULC Legislative Counsel Kaitlin Wolff at (312) 450-6615 or kwolff@uniformlaws.org.



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SB2023
3-5-19
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WHY YOUR STATE SHOULD ADOPT THE UNIFORM FAMILY LAW ARBITRATION ACT (2016)

The Uniform Family Law Arbitration Act (UFLAA) provides necessary guidelines for the arbitration of family law matters. As popularity grows for this form of alternative dispute resolution, enacting the UFLAA ensures predictability and consistency. Some features of the UFLAA include:

- ***The UFLAA offers an efficient alternative for the resolution of family law disputes.*** The Act gives parties a private, efficient method to solve family law problems. The UFLAA also gives parties control over selection of their arbitrator, and thus, more control over the timing of their dispute resolution process.
- ***The UFLAA seamlessly integrates the state's existing contractual arbitration law.*** The Act looks to the state's existing statutory law and procedural rules for contractual arbitration to fill in gaps not covered by the UFLAA.
- ***The UFLAA guards the role of the courts with respect to children.*** Arbitration awards regarding child custody or child support cannot be confirmed unless the court finds that the award complies with applicable law and is in the best interests of the child. If the parties are arbitrating a child-related dispute under the Act and the arbitrator has a reasonable basis to believe the child is subject to abuse or neglect, then the arbitrator ends the arbitration, and the matter will be sent to the court for resolution.
- ***The UFLAA protects victims of domestic violence.*** The Act provides safeguards to ensure that one party to the arbitration will not intimidate or overpower another. For example, a party to the arbitration process may be accompanied by a friend or supporter who will not be called as a witness or act as an advocate. All arbitrators must also be attorneys with domestic violence training. If the arbitrator detects domestic violence, the arbitrator will stay the arbitration and refer the parties to court.
- ***The UFLAA addresses post-decree modifications.*** The Act allows a party to request to modify an award or judgment after it has been confirmed by the court. The modification must be based on facts occurring after confirmation and may be resolved judicially or, if the parties agree, by arbitration.

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The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.