

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2063
(Judiciary Committee)
(At the request of the Commission on Uniform State Laws)

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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

32-29.4-01. Definitions.

In this chapter:

1. "Arbitration agreement" means an agreement that subjects a family law dispute to arbitration.
2. "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration or is involved in the selection of an arbitrator.
3. "Arbitrator" means an individual selected, alone or with others, to make an award in a family law dispute that is subject to an arbitration agreement.
4. "Child-related dispute" means a family law dispute regarding parenting time, or financial support regarding a child.
5. "Court" means the district court.
6. "Family law dispute" means a contested issue arising under the domestic relations law of this state.
7. "Party" means an individual who signs an arbitration agreement and whose rights will be determined by an award.
8. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal entity.
9. "Record", used as a noun, means information inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.
10. "Sign" means, with present intent to authenticate or adopt a record:
 - a. To execute or adopt a tangible symbol; or
 - b. To attach to or logically associate with the record an electronic symbol, sound, or process.
11. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

32-29.4-02. Scope.

1. This chapter governs arbitration of a family law dispute.

2. This chapter does not authorize an arbitrator to make an award that:
 - a. Grants a legal separation, divorce, or annulment;
 - b. Terminates parental rights;
 - c. Grants an adoption or a guardianship of a child or incapacitated individual;
 - d. Determines the status of dependency; or
 - e. Determines a child-related dispute.

32-29.4-03. Applicable law.

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

32-29.4-04. Arbitration agreement.

1. An arbitration agreement must:
 - a. Be in a record signed by the parties;
 - b. Identify the arbitrator, an arbitration organization, or a method of selecting an arbitrator; and
 - c. Identify the family law dispute the parties intend to arbitrate.
2. An agreement in a record to arbitrate a family law dispute that arises between the parties before, at the time, or after the agreement is made is valid and enforceable as any other contract and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.
3. If a party objects to arbitration on the ground the arbitration agreement is unenforceable or the agreement does not include a family law dispute, the court shall decide whether the agreement is enforceable or includes the family law dispute.

32-29.4-05. Notice of arbitration.

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

32-29.4-06. Motion for judicial relief.

1. A motion for judicial relief under this chapter must be made to the court in which a proceeding is pending involving a family law dispute subject to arbitration or, if no proceeding is pending, a court with jurisdiction over the parties and the subject matter.
2. On motion of a party, the court may compel arbitration if the parties have entered an arbitration agreement that complies with section 32-29.4-04 unless the court determines under section 32-29.4-11 the arbitration should not proceed.
3. On motion of a party, the court shall terminate arbitration if it determines:
 - a. The agreement to arbitrate is unenforceable;

- b. The family law dispute is not subject to arbitration; or
 - c. Under section 32-29.4-11, the arbitration should not proceed.
4. Unless prohibited by an arbitration agreement, on motion of a party, the court may order consolidation of separate arbitrations involving the same parties and a common issue of law or fact if necessary for the fair and expeditious resolution of the family law dispute.

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

1. Except as otherwise provided in subsection 2, unless waived in a record by the parties, an arbitrator must be:
- a. An attorney in good standing admitted to practice or on inactive status or a judge on retired status in a state; and
 - b. Trained in identifying domestic violence and child abuse.
2. The identification in the arbitration agreement of an arbitrator, arbitration organization, or method of selection of the arbitrator controls.
3. If an arbitrator is unable or unwilling to act or if the agreed-on method of selecting an arbitrator fails, on motion of a party, the court shall select an arbitrator.

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

1. Before agreeing to serve as an arbitrator, an individual, after making reasonable inquiry, shall disclose to all parties any known fact a reasonable person would believe is likely to affect:
- a. The impartiality of the arbitrator in the arbitration, including bias, a financial or personal interest in the outcome of the arbitration, or an existing or past relationship with a party, attorney representing a party, or witness; or
 - b. The arbitrator's ability to make a timely award.
2. An arbitrator, the parties, and the attorneys representing the parties have a continuing obligation to disclose to all parties any known fact a reasonable person would believe is likely to affect the impartiality of the arbitrator or the arbitrator's ability to make a timely award.
3. An objection to the selection or continued service of an arbitrator and a motion for a stay of arbitration and disqualification of the arbitrator must be made under the law and procedural rules of this state other than this chapter governing arbitrator disqualification.
4. If a disclosure required by subdivision a of subsection 1 or subsection 2 is not made, the court may:
- a. On motion of a party not later than thirty days after the failure to disclose is known or by the exercise of reasonable care should have been known to the party, suspend the arbitration;
 - b. On timely motion of a party, vacate an award under subdivision b of subsection 1 of section 32-29.4-18; or
 - c. If an award has been confirmed, grant other appropriate relief under law of this state other than this chapter.
5. If the parties agree to discharge an arbitrator or the arbitrator is disqualified, the parties by agreement may select a new arbitrator or request the court to select another arbitrator as provided in section 32-29.4-07.

32-29.4-09. Party participation.

1. A party may:
 - a. Be represented in an arbitration by an attorney;
 - b. Be accompanied by an individual who will not be called as a witness or act as an advocate; and
 - c. Participate in the arbitration to the full extent permitted under the law and procedural rules of this state other than this chapter governing a party's participation in contractual arbitration.
2. A party or representative of a party may not communicate ex parte with the arbitrator except to the extent allowed in a family law proceeding for communication with a judge.

32-29.4-10. Temporary order or award.

1. Before an arbitrator is selected and able to act, on motion of a party, the court may enter a temporary order in accordance with rule 8.2 of the North Dakota Rules of Court.
2. After an arbitrator is selected:
 - a. The arbitrator may make a temporary award in accordance with rule 8.2 of the North Dakota Rules of Court; and
 - b. If the matter is urgent and the arbitrator is not able to act in a timely manner or provide an adequate remedy, on motion of a party, the court may enter a temporary order.
3. On motion of a party, before the court confirms a final award, the court under section 32-29.4-15, 32-29.4-17, or 32-29.4-18 may confirm, correct, vacate, or amend a temporary award made under subdivision a of subsection 2.
4. On motion of a party, the court may enforce a subpoena or interim award issued by an arbitrator for the fair and expeditious disposition of the arbitration.

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

1. In this section, "protection order" means an injunction or other order, issued under the domestic violence, family violence, or stalking laws of the issuing jurisdiction, to prevent an individual from engaging in a violent or threatening act against, harassment of, contact or communication with, or being in physical proximity to another individual who is a party or a child under the custodial responsibility of a party.
2. If a party is subject to a protection order or an arbitrator determines there is a reasonable basis to believe a party's safety or ability to participate effectively in arbitration is at risk, the arbitrator shall stay the arbitration and refer the parties to court. The arbitration may not proceed unless the party at risk affirms the arbitration agreement in a record and the court determines:
 - a. The affirmation is informed and voluntary;
 - b. Arbitration is not inconsistent with the protection order; and
 - c. Reasonable procedures are in place to protect the party from risk of harm, harassment, or intimidation.
3. An arbitrator may make a temporary award to protect a party or child from harm, harassment, or intimidation.

4. On motion of a party, the court may stay arbitration and review a determination or temporary award under this section.
5. This section supplements remedies available under law of this state other than this chapter for the protection of victims of domestic violence, family violence, stalking, harassment, or similar abuse.

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

1. An arbitrator shall conduct an arbitration in a manner the arbitrator considers appropriate for a fair and expeditious disposition of the dispute.
2. An arbitrator shall provide each party a right to be heard, to present evidence material to the family law dispute, and to cross-examine witnesses.
3. Unless the parties otherwise agree in a record, an arbitrator's powers include the power to:
 - a. Select the rules for conducting the arbitration;
 - b. Hold conferences with the parties before a hearing;
 - c. Determine the date, time, and place of a hearing;
 - d. Require a party to provide:
 - (1) A copy of a relevant court order;
 - (2) Information required to be disclosed in a family law proceeding under law of this state other than this chapter; and
 - (3) A proposed award that addresses each issue in arbitration;
 - e. Appoint a private expert at the expense of the parties;
 - f. Administer an oath or affirmation and issue a subpoena for the attendance of a witness or the production of documents and other evidence at a hearing;
 - g. Compel discovery concerning the family law dispute and determine the date, time, and place of discovery;
 - h. Determine the admissibility and weight of evidence;
 - i. Permit deposition of a witness for use as evidence at a hearing;
 - j. For good cause, prohibit a party from disclosing information;
 - k. Impose a procedure to protect a party or child from risk of harm, harassment, or intimidation;
 - l. Allocate arbitration fees, attorney's fees, expert-witness fees, and other costs to the parties; and
 - m. Impose a sanction on a party for bad faith or misconduct during the arbitration according to standards governing imposition of a sanction for litigant misconduct in a family law proceeding.
4. An arbitrator may not allow ex parte communication except to the extent allowed in a family law proceeding for communication with a judge.

32-29.4-13. Recording of hearing.

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

32-29.4-14. Award.

1. An arbitrator shall make an award in a record, dated and signed by the arbitrator. The arbitrator shall give notice of the award to each party by a method agreed on by the parties or, if the parties have not agreed on a method, under the law and procedural rules of this state other than this chapter governing notice in contractual arbitration.
2. The award under this chapter must state the reasons on which it is based unless otherwise agreed by the parties.
3. An award under this chapter is not enforceable as a judgment until confirmed under section 32-29.4-15.

32-29.4-15. Confirmation of award.

1. After an arbitrator gives notice under subsection 1 of section 32-29.4-14 of an award, including an award corrected under section 32-29.4-16, a party may move the court for an order confirming the award.
2. The court shall confirm an award under this chapter if:
 - a. The parties agree in a record to confirmation; or
 - b. The time has expired for making a motion, and no motion is pending, under section 32-29.4-17 or 32-29.4-18.
3. On confirmation, an award under this chapter is enforceable as a judgment.

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

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

1. If the award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property;
2. If the award is imperfect in a matter of form not affecting the merits on the issues submitted; or
3. To clarify the award.

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

1. On motion of a party made not later than ninety days after an arbitrator gives notice under subsection 1 of section 32-29.4-14 of an award, including an award corrected under section 32-29.4-16, the court shall correct the award if:
 - a. The award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property;
 - b. The award is imperfect in a matter of form not affecting the merits of the issues submitted; or
 - c. The arbitrator made an award on a dispute not submitted to the arbitrator and the award may be corrected without affecting the merits of the issues submitted.

2. A motion under this section to correct an award may be joined with a motion to vacate or amend the award under section 32-29.4-18.
3. Unless a motion under section 32-29.4-18 is pending, the court may confirm a corrected award under section 32-29.4-15.

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

1. On motion of a party, the court shall vacate an unconfirmed award if the moving party establishes that:
 - a. The award was procured by corruption, fraud, or other undue means;
 - b. There was:
 - (1) Evident partiality by the arbitrator;
 - (2) Corruption by the arbitrator; or
 - (3) Misconduct by the arbitrator substantially prejudicing the rights of a party;
 - c. The arbitrator refused to postpone a hearing on showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 32-29.4-12, so as to prejudice substantially the rights of a party;
 - d. The arbitrator exceeded the arbitrator's powers;
 - e. No arbitration agreement exists, unless the moving party participated in the arbitration without making a motion under section 32-29.4-06 not later than the beginning of the first arbitration hearing; or
 - f. The arbitration was conducted without proper notice under section 32-29.4-05 of the initiation of arbitration, so as to prejudice substantially the rights of a party.
2. A motion under this section to vacate or amend an award must be filed not later than ninety days:
 - a. After an arbitrator gives the party filing the motion notice of the award or a corrected award; or
 - b. For a motion under subdivision a of subsection 1, after the ground of corruption, fraud, or other undue means is known or by the exercise of reasonable care should have been known to the party filing the motion.
3. If the court under this section vacates an award for a reason other than the absence of an enforceable arbitration agreement, the court may order a rehearing before an arbitrator. If the reason for vacating the award is the award was procured by corruption, fraud, or other undue means or there was evident partiality, corruption, or misconduct by the arbitrator, the rehearing must be before another arbitrator.
4. If the court under this section denies a motion to vacate or amend an award, the court may confirm the award under section 32-29.4-15 unless a motion is pending under section 32-29.4-17.

32-29.4-19. Clarification of confirmed award.

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

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

32-29.4-20. Judgment on award.

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

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

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

1. The parties shall proceed under the dispute-resolution method specified in the award or judgment; or
2. If the award or judgment does not specify a dispute-resolution method, the parties may:
 - a. Agree to arbitrate the modification before the original arbitrator or another arbitrator; or
 - b. Absent agreement proceed under law of this state other than this chapter governing modification of a judgment in a family law proceeding.

32-29.4-22. Enforcement of confirmed award.

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

32-29.4-23. Appeal.

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

32-29.4-24. Immunity of arbitrator.

1. An arbitrator or arbitration organization acting in that capacity in a family law dispute is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.
2. The immunity provided by this section supplements any immunity under law of this state other than this chapter.
3. An arbitrator's failure to make a disclosure required by section 32-29.4-08 does not cause the arbitrator to lose immunity under this section.
4. An arbitrator is not competent to testify, and may not be required to produce records, in a judicial, administrative, or similar proceeding about a statement, conduct, decision, or ruling occurring during an arbitration, to the same extent as a judge of a court of this state acting in a judicial capacity. This section does not apply:
 - a. To the extent disclosure is necessary to determine a claim by the arbitrator or arbitration organization against a party to the arbitration; or
 - b. To a hearing on a motion under subdivision a or b of subsection 1 of section 32-29.4-18 to vacate an award, if there is prima facie evidence a ground for vacating the award exists.
5. If a person commences a civil action against an arbitrator arising from the services of the arbitrator or seeks to compel the arbitrator to testify or produce records in violation of subsection 4 and the court determines the arbitrator is immune from civil liability or is not competent to testify or required to produce the records, the court shall award the arbitrator reasonable attorney's fees, costs, and reasonable expenses of litigation.

32-29.4-25. Relation to Electronic Signatures in Global and National Commerce Act.

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

32-29.4-26. Transitional provision.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2063.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 91 Nays 0 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State