

KANSAS OFFICE *of*
REVISOR *of* STATUTES

LEGISLATURE *of* THE STATE *of* KANSAS
Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: House Committee on Judiciary

From: Office of Revisor of Statutes

Date: January 19, 2023

Subject: Bill Brief on HB 2017

HB 2017 enacts the uniform family law arbitration act. Section 1 names the act and section 2 provides the definitions to be used throughout the act. Section 3 provides that this act governs arbitration of family law disputes. The act does not authorize the arbitrator to make an award that grants a divorce, annulment or separate maintenance, terminates parental rights, grants an adoption or guardianship, determines the status of a child in need of care or determines the existence or nonexistence of a parent and child relationship. Section 4 provides that except as provided in this act, article 4 of chapter 5 (the uniform arbitration act) governs arbitration. In determining the merits of a family law dispute, an arbitrator shall apply the laws of this state.

Section 5 provides that an arbitration agreement shall be in a signed record, identify the arbitrator and identify the family law dispute intended for arbitration. An agreement to arbitrate a child-related dispute that arises after the agreement is made is unenforceable unless the parties affirm the agreement in record after the dispute arises, or the agreement was entered during a family law proceeding and the court approved or incorporated the agreement in an order issued. If a party object to arbitration on the ground that the arbitration agreement is unenforceable or does not include a family law dispute, the court shall decide whether the agreement is enforceable or includes a family law dispute.

Section 6 provides that a party may initiate arbitration by giving notice to arbitrate in the manner specified in the agreement or under article 4 of chapter 5. Section 7 provides that a motion for judicial relief must be made to the court in which the proceeding is pending or, if no proceeding is pending, in a court with jurisdiction over the parties and subject matter. The court may compel arbitration if there is an agreement in compliance with section 5 unless the court

determines the arbitration should not proceed under section 12. This section also provides reasons a court is required to terminate arbitration.

Section 8 requires the arbitrator to be an attorney or retired judge and trained in identifying domestic violence and child abuse. If an arbitrator is unable or unwilling to act or if the method for selecting an arbitrator fails, the court shall select an arbitrator. Section 9 requires individuals to disclose any fact likely to affect the impartiality of the arbitrator or the arbitrator's ability to make a timely award. It also provides remedies if that disclosure is not made. Section 10 provides that a party may be represented by an attorney, be accompanied by someone not called as a witness and participate to the full extent allowed by law. A party or representative shall not have ex parte communications except to the extent allowed in family law proceedings with a judge.

Section 11 provides that before an arbitrator is selected, the court may enter temporary orders. After an arbitrator is selected, the arbitrator may enter temporary orders or the court may enter them in certain circumstances. Section 12 defines protection order. If a party is subject to a protection order, the arbitrator shall stay the arbitration and refer the parties to court unless the court makes certain determinations. Section 13 requires an arbitrator to conduct an arbitration appropriately. Each party has a right to be heard. The section also lists the arbitrator's powers. Section 14 provides that arbitration hearings do not need to be recorded, but a verbatim recording must be made of any part of an arbitration hearing concerning child-related disputes.

Section 15 requires an arbitrator to make an award in a signed record. The award shall state the reasons in which it is based. An award determining child-related disputes shall state the reasons on which it is based as required by law. An award is not enforceable as a judgment until confirmed. Section 16 allows a party to move the court for an order confirming an award from arbitration. The court shall confirm the award if the parties agree in a record to the confirmation or the time has expired for making a motion and no motion is pending. If an award determines child-related disputes, the court shall confirm if the award on its face complies with section 15 and state law on child-related disputes and is in the best interest of the child. On confirmation, the award is enforceable as a judgment.

Section 17 allows an arbitrator to correct an award on motion of a party within 30 days of giving notice of the award if the award has an evidence mathematical miscalculation or mistake, if the award is imperfect in a matter of form not affecting the merits or to clarify the award. Section 18 provides a method for the court to correct an award. Section 19 establishes reasons the court shall vacate an unconfirmed award. Section 20 provides that if the meaning of a

confirmed award is in dispute, the parties may agree to arbitrate or proceed in court. Section 21 requires the court to enter judgment in conformity with their order. The court may order certain records redacted or sealed.

Section 22 provides that if a party requests modification of an award, the parties shall proceed under the dispute-resolution method specified in the award or agree to arbitrate or proceed under state law. Section 23 requires the court to enforce a confirmed award. Section 24 provides the actions you can appeal. Section 25 provides that an arbitrator is immune from civil liability to the same extent as a judge. An arbitrator is not competent to testify and shall not be required to produce records unless necessary to determine a claim by the arbitrator against a party or a motion to vacate an award. If a person commences a civil action against an arbitrator and the court determines the arbitrator is immune from liability, the court shall award the arbitrator reasonable attorney fees.

Section 26 requires consideration be given to the uniformity of laws. Section 27 provides that the act modifies, limits or supersedes certain parts of the electronic signatures in global and national commerce act. Section 28 applies the act prospectively to an arbitration agreement made on or after July 1, 2023, and allows parties to agree in a record to apply this act to an arbitration agreement made before July 1, 2023.