

HOUSE BILL 1177

By Garrett

AN ACT to amend Tennessee Code Annotated, Title 36,
relative to domestic relations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 4, is amended by adding the following new part:

36-4-201.

This act is known and may be cited as the "Tennessee Domestic Relations Arbitration Act."

36-4-202.

(a) As used in this part:

(1) "Arbitration agreement" means a written agreement signed by the parties that subjects a domestic relations dispute between the parties 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, excluding a court that makes an appointment;

(3) "Arbitrator" means an individual selected, alone or with others, to make an award in a domestic relations dispute that is subject to an arbitration agreement;

(4) "Award" means any interim order, temporary order, or final disposition of a domestic relations dispute by an arbitrator;

(5) "Child-related dispute" means a domestic relations dispute regarding legal custody, physical custody, custodial responsibility, parental responsibility or authority,

parenting time, right to access, decision-making authority, visitation, parentage, and financial support regarding a child;

(6) "Court" means the local Tennessee court that has jurisdiction and venue to hear domestic relations disputes;

(7) "Domestic relations dispute" means a contested issue arising out of the domestic relationship, unless otherwise excluded in this part;

(8) "Party" means an individual who signs an arbitration agreement and whose rights may be determined by an award;

(9) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal entity;

(10) "Order of protection" means an injunction or other order, issued under chapter 3, part 6 of this title;

(11) "Sign" means, with present intent to authenticate or adopt a writing:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the writing an electronic symbol, sound, or process; and

(12) "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.

36-4-203.

(a) This part governs arbitration of a domestic relations dispute.

(b) An arbitrator does not have authority to issue an award that:

(1) Grants a legal separation, divorce, dissolution of marriage, or annulment;

(2) Terminates parental rights;

- (3) Grants an adoption or a guardianship of a child or incapacitated individual;
- (4) Determines the status of dependency or adjudicates a child in need of protection; or
- (5) Determines issues of civil or criminal contempt.

36-4-204.

In determining the merits of a domestic relations dispute, the matter is governed by the substantive laws of this state, including its choice of law rules, and its procedural laws where applicable.

36-4-205.

(a) An arbitration agreement must:

- (1) Be signed by the parties to the arbitration proceeding;
- (2) Identify the arbitrator, an arbitration organization, or a method of selecting an arbitrator; and
- (3) Describe in a general nature the domestic relations dispute the parties intend to arbitrate.

(b) Except as otherwise provided in subsection (c), an agreement to arbitrate a domestic relations dispute that arises between the parties before 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.

(c) An agreement to arbitrate a child-related dispute that arises between the parties after the agreement is made is unenforceable unless the resolution of the dispute is made in accordance with this part.

(d) If a party objects to arbitration on the ground the arbitration agreement is unenforceable or the agreement does not include a domestic relations dispute, then the court must decide whether the agreement is enforceable or includes the domestic relations dispute.

36-4-206.

(a) A person initiates an arbitration proceeding by giving written notice to the other parties to the agreement as provided in the agreement, or, in the absence of such a provision, by certified or registered mail, return receipt requested, or an alternative commercial service that confirms delivery. The notice must describe the nature of the controversy and the remedy sought.

(b) Unless a person promptly objects in the arbitration proceeding to the lack or insufficiency of notice, the person by participating in the proceeding waives any objection to lack of or insufficiency of notice.

36-4-207.

(a) When a domestic relations civil action is pending, an application to the court for judicial relief under this part must be made to that court.

(b) If no domestic relations civil action is pending, then application for judicial relief under this part must be made to a court with jurisdiction over the parties, subject matter jurisdiction, and venue.

(c) Upon application by a party to a court, a court may compel arbitration if the parties have entered into an arbitration agreement that complies with this part unless a court determines that the arbitration should not proceed because a party's safety or ability to participate effectively in arbitration is at risk.

(d) Upon application by a party to a court, a court shall terminate arbitration if it determines that:

(1) The parties have not entered into an arbitration agreement that complies with this part; or

(2) The arbitration should not proceed because a party's safety or ability to participate effectively in arbitration is at risk.

(e) Unless prohibited by an arbitration agreement, on application of a party, a 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 domestic relations dispute.

(f) Unless a domestic relations civil action between the parties is pending, an application to compel or terminate arbitration under this part must be served in the manner provided by law for the service of a summons in a civil action.

36-4-208.

(a) Except as otherwise provided in subsection (b), unless waived in a writing signed by the parties, an arbitrator must:

(1) Be an attorney in good standing admitted to practice in this state;

(2) Be trained in arbitration with the American Academy of Matrimonial Lawyers (AAML), American Bar Association (ABA), American Arbitration Association (AAA), or a substantially equivalent arbitration organization or training approved by the administrative office of the court; and

(3) Have practiced law or served as a judge in this state for a minimum of ten (10) years and during the lawyer's time or judicial tenure, a substantial portion of the lawyer's practice must have been family law cases.

(b) An arbitrator or arbitration organization is selected through a process stated in the arbitration agreement.

(c) If an arbitrator is unable or unwilling to act, is not identified in an agreement, or if the agreed method of selecting an arbitrator fails, then upon application of a party, the court must nominate three (3) individuals and each party taking alternate turns shall strike one (1) name from the court's list. The court then must appoint the remaining arbitrator unless a valid and timely objection is made within ten (10) days of the court's appointment. In the event the designated arbitrator cannot serve, the process must be repeated to the extent necessary.

36-4-209.

(a) Before serving, the selected arbitrator, after making reasonable inquiry, shall disclose to all parties any known fact a reasonable person would believe is likely to affect:

(1) 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

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

(b) 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.

(c) An objection to the selection or continued service of an arbitrator must be made not later than thirty (30) days after discovery of undisclosed facts or other cause for disqualification is known or by the exercise of reasonable care should have been known to the objecting party:

(1) To an arbitration organization that appointed the arbitrator according to their procedure; or

(2) Where the arbitrator was otherwise selected, upon application to a court for a stay of arbitration and disqualification of the arbitrator.

(d) If the arbitrator recuses, the parties agree to discharge an arbitrator, or the arbitrator is disqualified, then the parties by agreement may select a new arbitrator or request the appointing authority or a court, as appropriate, to select another arbitrator as provided in § 36-4-208.

36-4-210.

(a) A party may:

(1) Be represented in an arbitration by an attorney or be self-represented; and

(2) Be accompanied by an individual who will not be called as a witness nor act as an advocate.

(b) A party or representative of a party may not communicate ex parte with the arbitrator except to the extent that the person would be allowed to communicate with a judge pursuant to the Code of Judicial Conduct of the Rules of the Tennessee Supreme Court.

36-4-211.

(a) Before an arbitrator is selected, upon application of a party, a court may enter a temporary order under this title and Rule 65 of the Tennessee Rules of Civil Procedure to preserve the status quo.

(b) After an arbitrator is selected:

(1) The arbitrator may make a temporary award under this title and Rule 65 of the Tennessee Rules of Civil Procedure; and

(2) If the matter is urgent and the arbitrator is not able to act in a timely manner or provide an adequate remedy, then upon application of a party, a court may enter a temporary order under this title and Rule 65 of the Tennessee Rules of Civil Procedure.

(c) Upon application of a party and before a court confirms a final award, the court under this part may confirm, vacate, alter, or amend the temporary award made under subdivision (b)(1).

(d) Upon application of a party, the court may enforce a subpoena or temporary award issued by an arbitrator for the fair and expeditious disposition of the arbitration.

(e) When an arbitrator makes an award in favor of a party to the arbitration proceeding, the prevailing party may make application with the court for an expedited order to confirm the award. Following such application, the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, alters, or amends the award under this part.

36-4-212.

(a) If a party is subject to an order of protection 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, then the arbitrator must stay the arbitration, subject to subsection (b). Before the arbitration may proceed, after application by the party at risk, the party at risk must affirm the arbitration agreement in a writing and a court must determine that:

- (1) The affirmation is informed and voluntary;
- (2) Arbitration is not inconsistent with the order of protection; and
- (3) Reasonable procedures are in place to protect the party from risk of harm, harassment, or intimidation.

(b) If an arbitrator determines that there is a reasonable basis to believe the case involves domestic abuse or child abuse or neglect, then the arbitrator may make a temporary order to protect a party or child from abuse or neglect and must stay the arbitration.

(c) An arbitrator may make a temporary order to protect a party or child from harm, harassment, or intimidation.

(d) Upon application of a party to a court, a court may stay arbitration and review a determination or temporary award under this section and either confirm, vacate, alter, or amend the award.

(e) This section supplements remedies available under laws of this state other than this part for the protection of victims of domestic violence, family violence, stalking, harassment, or similar abuse.

36-4-213.

(a) An arbitrator shall conduct an arbitration in compliance with the rules or procedures of the appointing authority not inconsistent with this act, or in the absence of the rules or

procedures, in a manner the arbitrator considers appropriate for a fair and expeditious disposition of the dispute.

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

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

- (1) Select the rules for conducting the arbitration, unless specified in the arbitration agreement;
- (2) Hold conferences with the parties before a hearing;
- (3) Determine the date, time, and place of hearing;
- (4) Require a party to provide:
 - (A) A copy of a relevant court order;
 - (B) Information required to be disclosed in a domestic relations proceeding under law of this state other than this act; and
 - (C) A proposed award that addresses each issue in arbitration;
- (5) Meet with or interview a child who is the subject of a child-related dispute;
- (6) Appoint a private expert at the expense of the parties;
- (7) 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;
- (8) Compel discovery concerning the domestic relations dispute and determine the date, time, and place of discovery;
- (9) Determine the admissibility and weight of the evidence;
- (10) Permit deposition of a witness for use as evidence at a hearing;
- (11) For good cause, prohibit a party from disclosing information;

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

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

(14) Allocate arbitration fees, attorney's fees, expert witness fees, and other costs to the parties, as authorized by the agreement or otherwise by law; and

(15) Issue an award of sanctions on a party for bad faith or misconduct during the arbitration according to standards governing imposition of a sanction for litigant misconduct in a domestic relations proceeding.

(d) The arbitrator may decide, after consulting the parties, and on the basis of the relevant facts and circumstances of the case, that any hearing will be conducted by physical attendance or remotely by videoconference, telephone, or other appropriate means of communication.

36-4-214.

(a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon application to a court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious, and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed or is unable to attend a hearing. The arbitrator must determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate under the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

(d) If an arbitrator permits discovery under subsection (c), then the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon application to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

36-4-215.

(a) Except as required by this section or other law of this state, an arbitration hearing is not required to be recorded unless required by the arbitrator, provided by the arbitration agreement, or requested by a party.

(b) Any part of an arbitration hearing concerning a child-related dispute must be recorded.

36-4-216.

(a) An arbitrator shall issue a written, dated, and signed award not later than thirty (30) days after the arbitration hearing has concluded, unless the agreement or the rules of the appointing authority otherwise provide. The arbitrator shall give notice by delivering the award to each party by a method agreed on by the parties or, if the parties have not agreed on a method, by any method reasonably calculated to give the parties prompt notice.

(b) The award under this part must state the reasons on which it is based unless otherwise agreed by the parties.

(c) An award determining a child-related dispute must state the reasons in particular on which it is based on applying the laws of this state. Such an award is enforceable only after the court reviews the award with the same standard for approval of agreed permanent parenting plans.

(d) An award under this part is not enforceable as a judgment until confirmed under this part. Temporary awards of the arbitrator are subject to immediate confirmation regardless of the ongoing arbitration proceeding.

36-4-217.

On motion of a party made not later than thirty (30) days after the arbitrator gives notice of an award, the arbitrator may alter or amend 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.

36-4-218.

(a) After an arbitrator gives notice of an award, including an altered or amended award, and upon application to the court to confirm the award, the court shall issue a confirming order unless the parties otherwise in a record state that part or all of an award shall not be confirmed by the court or an application to vacate, alter, or amend the award is timely filed.

(b) Upon application by a party, filed within sixty (60) days of the arbitrator's notice, a court shall confirm a binding arbitration award:

(1) Where all parties to the arbitration agree in writing to the confirmation of the award; or

(2) The time has expired for making a motion, and no motion is pending under this act.

(c) Upon application by a party, filed within sixty (60) days of the arbitrator's notice, the court shall vacate an unconfirmed award if the moving party establishes that:

(1) The award was procured by fraud or other undue means;

(2) There is by clear and convincing evidence of partiality by an arbitrator appointed as a neutral or of the arbitrator's misconduct substantially prejudicing the rights of any party;

(3) The arbitrator exceeded their authority;

(4) The arbitrator refused to postpone a hearing on showing of sufficient cause for postponement, or refused to hear evidence material to the controversy, or otherwise so conducted the hearing in a manner to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement unless the party participated in the arbitration hearing without raising the objection.

(d) If an award determines a child-related dispute, then a court shall confirm the non-binding award in accordance with subsection (b), if the court finds that the award also:

(1) States the reasons with particularity;

(2) Complies with the laws of this state; and

(3) Is in the best interests of the child.

(e) Before a court confirms an award, the court also may alter or amend 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.

(f) A court's review of a child-related dispute shall be a review based on the arbitral record, with no additional proof introduced, unless otherwise directed by the court.

(g) On confirmation, an award under this part is enforceable as a judgment.

36-4-219.

(a) A court shall enforce an award confirmed under this part, including a temporary award, in the manner and to the same extent as any other judgment.

(b) A court of this state shall grant full faith and credit to the judgment of a court of another state confirming an arbitration award in a domestic relations dispute, that is not inconsistent with this part or the laws of this state.

(c) Upon application of a party, the court may order that 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 the law of this state other than this part.

36-4-220.

(a) An appeal may be taken under this part from:

- (1) An order denying an application to compel arbitration;
- (2) An order granting an application to stay arbitration; or
- (3) An order confirming or denying confirmation of an award.

36-4-221.

(a) An arbitrator or arbitration organization acting in that capacity in a domestic relations dispute is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(b) The immunity provided by this section supplements any immunity under law of this state other than this act.

(c) An arbitrator's failure to make a disclosure required by § 36-4-209 does not cause the arbitrator to lose immunity under this section.

(d) An arbitrator is not competent to testify, and shall not be required to produce records, in a judicial, administrative, arbitration, 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 is afforded the same protection and immunities.

This subsection (d) does not apply:

- (1) To the extent disclosure is necessary to determine a claim by the arbitrator or arbitration organization against a party to the arbitration; or
- (2) To a hearing on a motion to confirm an award.

(e) 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 (d) and the court determines that the arbitrator is immune from civil liability, cannot be compelled to testify, or cannot be required to produce the records, then the court shall award the arbitrator reasonable attorney's fees, costs, and expenses of litigation.

36-4-222.

In applying and construing this act, consideration must be given to promoting uniformity of the law with respect to its subject matter among states that have the same or similar arbitration laws.

36-4-223.

This part modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

36-4-224.

This part applies to arbitration of a domestic relations dispute under an arbitration agreement made on or after July 1, 2023. If an arbitration agreement was made before July 1, 2023, then the parties may agree that this part applies to the arbitration.

SECTION 2. Tennessee Code Annotated, Section 36-3-501, is amended by redesignating the current language as subsection (a) and adding the following new subsection:

(b) Any arbitration agreement made pursuant to the Tennessee Domestic Relations Arbitration Act, codified at title 36, chapter 4, part 2, is binding upon any court having jurisdiction over the parties to the agreement or the agreement. The terms of the agreement must be enforceable by all remedies available for enforcement of contract terms.

SECTION 3. Tennessee Code Annotated, Section 36-4-121, is amended by adding the following new subsection:

() When the parties to a divorce or legal separation submit to arbitration under the Tennessee Domestic Relations Arbitration Act, codified at title 36, chapter 4, part 2, the court is not required to make an affirmative finding concerning the equitable distribution of marital property.

SECTION 4. This act takes effect July 1, 2023, the public welfare requiring it.