

## Proposed New CT Family Arbitration Statute

### **§ 46b-90 Short title; purpose.**

(a) This Article may be referred to as "The Connecticut Family Arbitration Act."

(b) It is the policy of this State, to allow, by agreement of all parties, the arbitration of all issues arising from any domestic relations case, marital separation or divorce, except for the divorce itself, while preserving a right of modification. This right for parties to avail themselves of arbitration shall provide the parties a right of modification based on substantial change of circumstances related to alimony, child custody and parenting time issues, and child support. Pursuant to this policy, the purpose of this Article is to provide for arbitration as an efficient and speedy means of resolving these disputes, to provide default rules for the conduct of arbitration proceedings, and to assure access to the courts of this State for proceedings ancillary to this arbitration.

### **§46b-90a Definitions**

- (a) "Arbitrator" as used in this Act contemplates one or more persons chosen to provide findings of fact and decide a dispute or controversy in the parameters of this Act.
- (b) "Court" means a court of the Superior Court having competent jurisdiction over the case or controversy at hand.
- (c) "Domestic relations matter" shall be defined as including but not being limited to issues involving or incident to: divorce, custody, visitation, legal separation, paternity, prenuptial agreements, and civil unions/same sex marriages.
- (d) "Judge" shall mean a Judge or Judge Trial Referee of the Superior Court.

### **§ 46b-91 Arbitration agreements; irrevocability and enforceability.**

(a) Parties may agree in writing to submit to arbitration any controversy regarding domestic relations matters then pending in the Superior Court, except for resolution of a divorce itself.

(b) A provision in any written contract to settle by arbitration any issue involving any aspect of litigation or controversies implicating directly, or indirectly, Chapter 815J or Chapter 815P of the General Statutes, or out of the refusal to perform the whole or any part of the contract, or an agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, shall be valid, irrevocable and enforceable except upon such grounds as exist at law or in equity for the revocation of any contract.

(c) Before marriage, parties may agree in writing to submit to arbitration any controversy, except for a divorce itself, arising out of the marital relationship. This agreement is valid, enforceable, and irrevocable except with both parties' consent, without regard to the justiciable character of the controversy and without regard to whether litigation is pending as to the controversy.

(d) Making an agreement to arbitrate issues in this State or under its laws confers jurisdiction on the court to enforce the agreement under this Article and to enter judgment on an award under the agreement.

(e) This Article does not apply to an agreement to arbitrate in which a provision stipulates that this Article does not apply or to any arbitration or award.

### **§ 46b-92 Court Approval; Court Enforcement**

(a) If an agreement to arbitrate per §46b-91 occurs during the pendency of an existing case or controversy then pending in the Superior Court, then the efficacy and enforceability of any arbitration shall attach only after a judge of the Superior Court has made a thorough inquiry on the record and is satisfied that (1) each party entered into such agreement voluntarily and without coercion, (2) such agreement is fair and equitable under the circumstances, and (3) such agreement shall be in writing and signed by both parties.

(b) Said agreements to arbitrate issues from domestic relations cases must, at a minimum: (1) identify an individual to serve as a family law arbitrator, or a mechanism by which an arbitrator is selected; (2) identify the issue(s) to be arbitrated; (3) delineate the means by which the arbitrator is to be paid; and (4) provide a timeframe within which the arbitration is occur.

(c) For matters in which a contract to arbitrate per §46b-91(c) is formally executed for anticipated issues, the formally executed contract shall provide authority to arbitrate said issue(s). A contract entered into per this section is valid, enforceable, and irrevocable except with both parties' consent, without regard to the justicible character of the controversy and without regard to whether litigation is pending as to the controversy.

(d) The judges of the Superior Court have the authority to enforce a contract to arbitrate. To this end:

- (1) A party to a written agreement for arbitration claiming the neglect or refusal of another to proceed with an arbitration thereunder may make application to the Superior Court for the Judicial District in which one of the parties resides or, in a controversy concerning land, for the Judicial District in which the land is situated, for an order directing the parties to proceed with the arbitration in compliance with their agreement. If the arbitration is for a then-pending matter, the application shall be via motion per §46b-94. If the arbitration is for a matter that is not then the focus or is not then able to be the focus of an existing litigation between/among the parties, then the application to enforce arbitration shall be by writ of summons and complaint, served in the manner provided by law.
- (2) On a party's application showing an agreement under C.G.S. §§46b-91 and 46b-91a and an opposing party's refusal to arbitrate, the court shall order the parties to proceed with the arbitration. If an opposing party denies existence of an agreement to arbitrate, the court shall proceed summarily to determine whether a valid agreement exists and shall order arbitration if it finds for the moving party; otherwise, the application shall be denied.
- (3) Upon the application of a party, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. This issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the court shall order a stay if it finds for the moving party. If the court finds for the opposing party, the court shall order the parties to proceed with arbitration per the arbitration agreement. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court unless the court otherwise orders.
- (4) If an issue referable to arbitration under an alleged agreement is involved in an action or proceeding pending in a court of competent jurisdiction, the application to enforce an agreement to arbitrate shall be made in that court. Otherwise, the application may be made in any court of competent jurisdiction.
- (5) An order for arbitration shall not be refused and a stay of arbitration shall not be granted on the ground that the claim in issue lacks merit or because grounds for the claim have not been shown.

**§ 46b-93 Stay of proceedings in court; severability.**

(a) If any action for legal or equitable relief or other proceeding is brought by any party to a written agreement to arbitrate, the court in which the action or proceeding is pending, upon being satisfied that any issue involved in the action or proceeding is referable to arbitration under the agreement, shall, on motion of any party to the arbitration agreement, stay the action or proceeding until an arbitration has been had in compliance with the agreement, provided the person making application for the stay shall be ready and willing to proceed with the arbitration.

(b) The court shall order a stay in any action or proceeding involving an issue subject to arbitration if an order or an application for arbitration has been made under this section. If the issue is severable, the stay may be with respect to that specific issue only. When the application is made in an action or proceeding, the order compelling arbitration shall include a stay of the court action or proceeding.

#### **§ 46b-94 Notice.**

(a) A person initiates an arbitration proceeding by drafting and filing a pleading per Rules of Practice, as well as giving written notice to the other parties to the agreement as mandated by civil court rules of practice. Said pleading shall contain an Order for Hearing and Notice, as approved and signed by a Clerk of the Court.

(b) Said pleading referenced herein shall be sent to the other party/parties in the manner in which the parties had agreed, or, in the absence of agreement regarding the manner of notice, then by certified or registered mail, return receipt requested, or by service as authorized for the commencement of a civil action under the General Statutes.

(c) Unless a person objects to the lack or insufficiency of notice not later than the beginning of the hearing, the person's appearance at the hearing waives the objection.

(d) A person has notice if the person has knowledge of the notice or has received notice.

(e) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business or at another location held out by the person as a place of delivery of communications.

#### **§46b-95 Interim Relief**

(a) At any time before an arbitrator renders an award pursuant to an arbitration under this Act, the Superior Court for the Judicial District in which one of the parties resides, or in a controversy concerning land, for the Judicial District in which the land is situated, upon application of any party to the arbitration, may make forthwith such order or decree, issue such process and direct such proceedings as may be necessary to protect the rights of the parties pending the rendering of the award and to secure the satisfaction thereof when rendered and confirmed.

#### **§46b-96 Arbitrators; Selection/Appointment**

(a) If, in an agreement to arbitrate, provision is made for a method of naming or appointing an arbitrator or arbitrators, that method shall be followed.

(b) If no method is provided in the agreement, or if a method is provided and any party thereto fails to make use of the method, or if for any other reason there is a lapse in the naming of an arbitrator or arbitrators, or in filling a vacancy, then upon the application of either party to the controversy, a judge of the the Superior Court shall designate and appoint an arbitrator as the case may require, who shall act under the agreement with the same force and effect as if specifically named in the agreement.

(c) If an arbitrator is to be appointed by a judge of the Superior Court, the qualifications of the arbitrator shall be:

(1) An attorney with a minimum of five (5) years' trial court experience; or

(2) A person with extensive knowledge of the issue(s) to be arbitrated.

(d) No person acting as an arbitrator for a particular action may participate in any subsequent court proceeding on that action arbitrated as either a counsel or a witness unless the court deems the member's testimony necessary for hearings under §46b-103 or §46b-104.

**§ 46b-96a Disclosure by Arbitrator.**

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

- (1) A past, present, or reasonably foreseeable future financial or personal interest in the outcome of the arbitration proceeding.
- (2) An existing or past relationship with any of the parties to the agreement to arbitrate or to the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the timely objection shall result in making the any subsequent award made by the arbitrator voidable.

- (1) An objection made by a party or counsel of a party pursuant to §46b-96a(c), shall be made in writing, and said writing shall be provided to the arbitrator and all other parties and counsel involved in the arbitration. After said objection is made, if there is no agreement to terminate the arbitration, the objecting party may seek relief from the Superior Court.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this section, upon timely objection by a party, the Superior Court may vacate an award made by the arbitrator.

(e) An arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under §46b-103(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration institution or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on those grounds.

(g) The parties and counsel to an arbitration may waive any conflict of interest or other potential issue disclosed by an arbitrator. Said waiver must be made in writing, and said writing shall be submitted to the Superior Court for a full canvassing of the parties and counsel on the record. Said waiver must be disclosed to the Superior Court prior to the arbitrator continuing work in the arbitration.

**§46b-97 Subpoenas and Depositions.**

(a) The arbitrators have the power to administer oaths and may issue subpoenas for attendance of witnesses and for production of books, records, documents, and other evidence. Subpoenas issued by the arbitrators shall be served and, upon application to the Superior Court by a party or the arbitrators, enforced in the manner provided by law for service and enforcement of subpoenas in a civil action.

(b) On the application of a party and for use as evidence, the arbitrator(s) may permit depositions to be taken in the manner and upon the terms the arbitrators designate.

(c) All provisions of law compelling a person under subpoena to testify apply.

(d) The arbitrator, or a party with the approval of the arbitrator, may request assistance from the Superior Court in obtaining discovery, enforcing subpoenas, and taking evidence, in which event the Rules of Civil Procedure shall apply. The court may execute the request within its competence and according to its rules on discovery and evidence and may impose sanctions for failure to comply with its orders.

(e) A subpoena may be issued as provided by Chapter 899 of the General Statutes, in which case the witness compensation provisions of \_\_\_\_\_ shall apply.

#### **§46b-98 Hearing**

(a) Unless otherwise provided by the parties' written agreement:

(1) The arbitrator to an arbitration matter shall appoint a time and place for the hearing and notify the parties or their counsel by personal service or by registered or certified mail, return receipt requested, not less than seven days before the hearing. Appearance of a party at the hearing waives any claim of deficiency of notice thereof.

(2) The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause shown, or upon their own motion, may postpone the hearing. The arbitrator may adjourn any hearing, from time to time, as may be necessary. Any postponement or adjournment shall not extend the time, if any, fixed in the arbitration agreement, for rendering the award.

(3) The arbitrator may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

(b) The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(c) Upon request of any party or at the election of any arbitrator, the arbitrator shall cause to be made a record of testimony and evidence introduced at the hearing. The arbitrator shall decide how the cost of the record will be apportioned.

(d) At any time during an arbitration, upon request of all parties to the arbitration, the arbitrator shall make application to any designated Superior Court, or to any designated judge, for a decision on any question arising in the course of the hearing, provided such parties shall agree in writing that the decision of such court or judge shall be final as to the question determined and that it shall bind the arbitrator in rendering his/her award. An application under this section may be heard in the manner provided by law for the hearing of written motions at a short calendar session, or otherwise as the court or judge may direct.

#### **§46b-99 Awards; Timing; Costs.**

(a) If the time within which an award is rendered has not been fixed in the arbitration agreement, the arbitrator shall render the award within thirty days from the date the hearing or hearings are completed, or, if the parties are to submit additional material after the hearing or hearings, thirty days from the date fixed by the

arbitrator for the receipt of said additional material. An award made after that time shall have no legal effect unless the parties expressly extend the time in which the award may be made by an extension or ratification in writing.

(b) The award shall be in writing, dated and signed by the arbitrator rendering the award, with a statement of the place where the arbitration was conducted and the place where the award was made. Where there is more than one arbitrator, the signatures of a majority of the arbitrators suffice, but the reason for any omitted signature shall be stated. The arbitrator shall deliver a copy of the award to each party personally or by registered or certified mail, return receipt requested, or as provided in the parties' written agreement. Time of delivery shall be computed from the date of personal delivery or date of mailing.

(c) The award shall state a detailed, factual basis upon which it is based. Absent a prior order from the Superior Court for reasons compelling the absence of a finding of facts, the parties and counsel to an arbitration may not elect to waive the requirement that all awards have a detailed, factual bases for the decisions rendered.

(d) Unless the parties otherwise agree in writing, arbitrators may award interest as provided by law.

(e) The arbitrators in their discretion may award specific performance to a party requesting an award of specific performance when that would be an appropriate remedy.

(f) Unless the parties otherwise agree in writing, the arbitrators may not award punitive damages. If arbitrators award punitive damages, they shall state the award in a record and shall delineate facts specific to the justification of the award and the amount of the award attributable to punitive damages.

(g) Unless the parties otherwise agree in writing, awarding of costs of an arbitration shall be in the arbitrators' discretion. In making an award of costs, the arbitrators may include any or all of the following as costs:

- (1) Fees and expenses of the arbitrators, expert witnesses, and translators;
- (2) Fees and expenses of counsel, to the extent allowed by law unless the parties otherwise agree in writing, and of an institution supervising the arbitration, if any;
- (3) Any other expenses incurred in connection with the arbitration proceedings;
- (4) Sanctions awarded by the arbitrators or the court; and
- (5) Costs allowed by the General Statutes.

(h) In making an award of costs, the arbitrators shall specify each of the following:

- (1) The party entitled to costs;
- (2) The party who shall pay costs;
- (3) The amount of costs or method of determining that amount; and
- (4) The manner and timing by which costs shall be paid.

#### **§46b-100 Application for Order Confirming Award**

(a) At any time within thirty days after an award has been rendered and the parties to the arbitration notified thereof, any party to the arbitration may make application to the Superior Court for the Judicial District in which the parties' litigation is pending, for the Judicial District in which one of the parties resides, or in the controversy

concerning land, for the Judicial District in which the land is situated or, when the court is not in session, to any judge thereof, for an order confirming the award. The court or judge shall grant such an order confirming the award unless the award is vacated, modified or corrected as prescribed in sections 46b-101, 46b-103, and §46b-104.

**§ 46b-101 Change of award by arbitrators.**

(a) On a party's application to the arbitrators, if an application to the court is pending under §46b-100, or on submission to the arbitrators by the court under the conditions ordered by the court, the arbitrators may modify or correct the award for any of the following reasons:

- (1) Upon grounds stated in §46b-104(a)(1) and (a)(3).
- (2) If the arbitrators have not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding.
- (3) To clarify the award.

(b) The application shall be made within 20 days after delivery of the award to the opposing party. The application must include a statement that the opposing party must serve any objections to the application within 10 days from notice. An award modified or corrected under this section is subject to the provisions of §46b-99(a) through 46b-99(g) and 46b-102 through 46b-105.

**§ 46b-102 Confirmation of Award.**

(a) Unless the parties otherwise agree in writing that part or all of an award shall not be confirmed by the court, upon a party's application, the Superior Court shall confirm an award presented to it per §46b-100.

(b) The Superior Court shall have discretion to confirm an award presented to it per §46b-100 when within time limits imposed under §46b-99 or other procedural defects and/or issues contemplated in 46b-103 are noted.

(c) The court may award costs, as provided in §46b-99(g), of the application and subsequent proceedings.

**§46b-103 Vacating Award.**

(a) The court shall vacate an arbitration award upon the application of any party to the arbitration where:

- (1) the award was procured by corruption, fraud or undue means;
- (2) there was evident partiality or corruption on the part of the arbitrators, or either of them;
- (3) the arbitrator was guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;
- (4) the arbitrator exceeded his/her powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.
- (5) the arbitrator exceeded his/her powers;
- (6) if the parties contract in their arbitration agreement for judicial review of errors of law in the award, the court shall vacate the award if the arbitrators have committed an error of law prejudicing a party's rights.

(b) Where an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrator.

(c) An application under this section shall be made within thirty days after delivery of a copy of the award to the applicant. If the application is predicated on corruption, fraud, or other undue means, it shall be made within thirty days after these grounds are known or should have been known.

(d) The court shall confirm the award and may award costs of the application and subsequent proceedings under §46b-99(g) if an application to vacate is denied, no motion to modify or correct the award is pending, and the parties have not agreed in writing that the award shall not be confirmed under §46b-100.

#### **§46b-104 Modification or Correction of Award.**

(a) Upon application made within thirty days after delivery of a copy of an award to an applicant, the court shall modify or correct the award where at least one of the following occurs:

- (1) There is an evident miscalculation of figures or an evident mistake in the description of a person, thing, or property referred to in the award;
- (2) The arbitrators have awarded upon a matter not submitted to them, and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award, so as to effect the intent thereof and promote justice between the parties. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

(d) The court may award costs, as provided in §46b-99(g), of the application and subsequent proceedings.

#### **§ 46b-105 Modification of Award for Alimony, Child Support, or Child Custody Based on Substantial Change of Circumstances.**

(a) A court or the arbitrators may modify an award for financial support, alimony, child support, or child custody under conditions stated in §46b-86 as provided in subsections (b) through (f) of this section.

(b) Unless the parties have agreed in writing that an award for alimony shall be nonmodifiable, an award by arbitrators for alimony under §46b-82 or §46b-86 may be modified in subsequent arbitration or court decisions regarding alimony.

(c) An award by arbitrators for child support or child custody may be modified based upon changes in circumstances and/or upon findings of the best interests of the minor child.

(d) If an award for modifiable alimony, or an award for child support or child custody, has not been confirmed under §46b-100, upon the parties' written agreement these matters may be submitted to arbitrators chosen by the parties for a second arbitration to modify the unconfirmed award.

(e) If an award for modifiable alimony, or an award for child support or child custody has been confirmed pursuant to §46b-100, upon the parties' agreement in writing and joint motion, the court may remit these matters to arbitrators chosen by the parties for a second arbitration for these issues.

(f) Except as otherwise provided in this section, the provisions of §46b-104 apply to modifications or corrections of awards for financial support, alimony, child support, or child custody.

**§46b-106 Papers Filed With Court Regarding Award.**

(a) Any party to a proceeding seeking to confirm, modify or correct an award shall, at the time their motion is filed with the Superior Court shall append to the motion the following papers:

- (1) The agreement, the selection or appointment, if any, of an additional arbitrator, and each written extension of the time, if any, within which to make the award;
- (2) The award;
- (3) Each notice, affidavit or other paper used upon an application to confirm, modify or correct the award, and a copy of each order of the court upon such an application.

**§46b-107 Orders or Judgments on Award.**

(a) Upon granting an order confirming, modifying, or correcting an award, an order or judgment shall be entered in conformity with the order and docketed and enforced as any other order or judgment. The court may award costs, as provided in §46b-99(g), of the application and of proceedings subsequent to the application and disbursements.

**§ 46b-108 Applications to the Court.**

(a) Except as otherwise provided, an application to a court under this Article shall be by motion and shall be heard in the manner and upon notice provided by law or rule of court for making and hearing motions in civil actions. Unless the parties otherwise agree in writing, notice of an initial application for an order shall be served in the manner provided by law for service of summons in civil actions.

**§ 46b-109 Appeals.**

(a) An appeal may be taken from an order confirming, vacating, modifying or correcting an award, or from a judgment or decree upon an award, as in ordinary civil actions.

(b) Unless the parties contract in an arbitration agreement for judicial review of errors of law as provided in §46b-98(d), a party may not appeal on the basis that the arbitrator failed to apply correctly the law.