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SFA**BILL ANALYSIS**

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House Bill 4277 (as passed by the House)
Sponsor: Representative David Gubow
House Committee: Judiciary
Senate Committee: Families, Mental Health and Human Services

Date Completed: 4-23-97

CONTENT

The bill would amend the Revised Judicature Act (RJA) to provide for and govern voluntary arbitration proceedings in domestic relations matters. Arbitration proceedings under the bill also would be governed by court rule, except to the extent those provisions would be modified by an arbitration agreement or the bill. The bill would control if there were a conflict between it and Chapter 50 of the RJA, which deals with arbitration generally.

The bill would take effect on October 1, 1997.

Domestic Relations Arbitration Eligibility

Parties to an action for divorce, annulment, separate maintenance, child support, custody, or parenting time, or to a postjudgment proceeding relating to any of those actions, could stipulate to binding arbitration by a signed agreement that specifically provided for an award with respect to one or more of the following issues:

- Real and personal property.
- Child custody.
- Child support, subject to the restrictions and requirements in other laws and court rule, as provided in the bill.
- Parenting time.
- Spousal support.
- Costs, expenses, and attorney fees.
- Enforceability of prenuptial and postnuptial agreements.
- Allocation of the parties' respective responsibility for debt as between the parties.
- Other contested domestic relations matters.

A court could not order a party to participate in arbitration except to the extent the party had agreed to participate under a written arbitration agreement.

If the parties to an action agreed to arbitrate and there were allegations of domestic violence, each party would have to be represented by an attorney, and the court and the attorneys would have to ensure that each party's consent to arbitrate or to a suspension of the formal rules of evidence was informed and voluntary. The court would have to place each party's consent on the record.

Arbitrators

Appointment. Arbitration under the bill could be heard by a single arbitrator or by a panel of three arbitrators. The court would have to appoint an arbitrator agreed to by the parties if the arbitrator were qualified under the bill and consented to the appointment. An arbitrator appointed under the bill would be immune from liability in regard to the arbitration proceedings to the same extent as the circuit judge having jurisdiction of the action submitted to arbitration.

The court could not appoint an arbitrator unless that individual met all of the following qualifications:

- He or she was an attorney in good standing with the State Bar of Michigan.
- The person had practiced as an attorney for at least five years immediately preceding the appointment and had demonstrated an expertise in the area of domestic relations law.
- The appointee had received training in handling domestic relations matters with a history of domestic violence.

The Office of the Friend of the Court would have to make available a list of arbitrators who met the bill's qualifications. The list would have to include a summary of each arbitrator's qualifications and expertise.

Powers and Duties. An arbitrator appointed under the bill would have to hear and make an award on each issue submitted for arbitration under the arbitration agreement subject to the provisions of that agreement.

An arbitrator would have the power and duty to do all of the following:

- Administer an oath or issue a subpoena as provided by court rule.
- Issue orders regarding discovery proceedings relative to the issues being arbitrated.
- Allocate arbitration fees and expenses between the parties, including imposing a fee or expense on a party or attorney as a sanction, subject to provisions of the arbitration agreement.
- Enter an order requiring a party to produce specified information that the arbitrator considered relevant to, and helpful in resolving, an issue that was subject to arbitration.

If the arbitrator considered it relevant to an issue of arbitration, he or she could order the filing of an affidavit identifying a party's place of employment and other sources of income, and listing the assets and liabilities of the parties. The arbitrator could not release the affidavits required under this provision until after both parties had filed them. The arbitrator would have to attempt to release the affidavits to the opposite parties at approximately the same time.

An affidavit would have to list at least all of the following assets:

- Real property.
- Checking and savings account balances, regardless of the form in which the money was held.
- Stocks and bonds.
- Income tax refunds due the parties.
- Life insurance.
- Loans held as a creditor or money owed to the parties in whatever form.
- Retirement funds and pension benefits.
- Professional licenses.
- Motor vehicles, boats, mobile homes, or any other type of vehicle, including untitled vehicles.
- Extraordinary tools of a trade.
- Cemetery lots.
- Other assets in whatever form.

An affidavit would have to list at least all of the following liabilities:

- Secured and unsecured credits.
- Taxes.
- Rents and security deposits.
- All other liabilities in whatever form.

Disclosure and Disqualification. An arbitrator, attorney, or party in an arbitration proceeding under the bill would have to disclose any circumstance that could affect an arbitrator's impartiality, including, but not limited to, bias, a financial or personal interest in the arbitration's outcome, or a past or present business or professional relationship with a party or attorney. Upon disclosure, a party could request the arbitrator's disqualification. If the arbitrator did not withdraw within 14 days after a disqualification request, the party could file a motion for disqualification with the circuit court.

The circuit court would have to hear a motion for disqualification within 21 days after its filing. If the court found that the arbitrator was disqualified, it could appoint another arbitrator agreed to by the parties or void the arbitration agreement and proceed as if arbitration had not been ordered.

Arbitration Proceedings

Prehearing Matters. The parties and attorneys in a domestic relations arbitration would have to meet with the arbitrator, as soon as was practicable after his or her appointment, to consider all of the following:

- The scope of the issues submitted for arbitration.
- The date, time, and place of the arbitration hearing.
- Witnesses, including experts, who might testify.
- A schedule for the exchange of expert reports or summaries of expert testimony.
- Subject to access requirements discussed below, exhibits, documents, or other information each party considered material to the case and a schedule for production or exchange of the information. An objection not made before the hearing, as to production or lack of production of information, would be waived.
- Disclosure of conflict of interest required under the bill.

The arbitrator would have to order reasonable

access to information that was material to the arbitration issues including, at least, all of the following from each party:

- A current, complete, and accurate sworn financial disclosure statement.
- Financial disclosure statements for the past five years.
- State and Federal income tax returns for the previous three years or other time period as ordered by the arbitrator.
- If a court had issued an order concerning an issue subject to arbitration, a copy of the order, State and Federal income tax returns for the year the order was issued, and a financial statement for the time at which the order was entered. The financial statement would have to include at least gross and net income assets and liabilities.
- The proposed award for each issue subject to arbitration.

Record. Except as otherwise provided under the bill, court rule, or an arbitration agreement, a record of an arbitration hearing under the bill could not be made. If a record were not required, an arbitrator could make a record to be used only by the arbitrator to aid in reaching the arbitration decision.

A record would have to be made, however, of the portion of a hearing that concerned child support, custody, or parenting time, in the same manner required by the Michigan Court Rules for the record of a witness's testimony in a deposition. The parties could provide, in the arbitration agreement, that a record be made of those portions of a hearing related to one or more issues subject to arbitration.

Award. Unless otherwise agreed by the parties and arbitrator, in writing and on the record, the arbitrator would have to issue a written award on each issue within 60 days after the end of the hearing and after receiving proposed findings of fact and conclusions of law, if requested by the arbitrator.

If the parties reached an agreement regarding child support, custody, or parenting time, the agreement would have to be placed on the record by the parties, under oath, and be included in the arbitrator's written award. An arbitrator could not include in the award a child support amount that deviated from the child support formula developed by the State Friend of the Court Bureau, unless the arbitrator complied with the same requirements for a deviation as prescribed for the court under the

law applicable to the domestic relations dispute that was being arbitrated under the bill.

The arbitrator would retain jurisdiction to correct errors or omissions in an award, upon motion by a party to the arbitration within 21 days after the award was issued. Another party to the arbitration could respond to that motion within 14 days after the motion was made. The arbitrator would have to make a decision on the motion within 14 days after the response period expired.

Enforcement

The circuit court would have to enforce an arbitrator's award or other order issued under the bill in the same manner as an order issued by the court. A party could make a motion to the circuit court to enforce an arbitrator's award or order.

The plaintiff in an action submitted to arbitration under the bill would have to file with the circuit court a judgment, order, or motion to settle the judgment within 21 days after the arbitrator's award was issued, unless otherwise agreed to by the parties, in writing, or unless the arbitrator or court granted an extension. If the plaintiff failed to comply with that requirement, another party to the action could file a judgment, order, or motion to settle the judgment and could request sanctions.

Vacation or Modification of the Award

If a party to arbitration proceedings under the bill applied to the circuit court for vacation or modification of an arbitrator's award that concerned child support, custody, or parenting time, the court would have to review the award based only upon the record of the arbitration hearing. The court could not vacate or modify an award concerning child support, custody, or parenting time unless the court found that the award was adverse to the best interests of the child who was the subject of the award. A review or modification of a child support amount would have to be conducted and would be subject to the standards and procedures provided in other statutes and by court rule applicable to child support amounts. Other standards and procedures regarding review of child support, custody, or parenting time arbitration awards would be governed by court rule.

If a party applied to the circuit court for vacation or modification of an arbitrator's award issued under the bill that concerned other than child support, custody, or parenting time, the court would have to review the award as provided in the bill. If a party

applied for vacation or modification, the court would have to vacate an award under any of the following circumstances:

- The award was procured by corruption, fraud, or other undue means.
- There was evidence of partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights.
- The arbitrator exceeded his or her powers.
- The arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

An application to vacate an award on grounds of corruption, fraud, or undue means would have to be made within 21 days after the grounds were known or should have been known. If an award were vacated because an arbitrator exceeded his or her powers or refused to postpone a hearing, refused to hear material evidence, or conducted a hearing with prejudice, the court could order a rehearing before the same arbitrator. Other standards and procedures relating to review of arbitration awards would be governed by court rule.

The fact that the relief granted in an arbitration award could not be granted by a court of law or equity would not be grounds for vacating or refusing to confirm the award.

Appeals

An appeal from an arbitration award under the bill that the circuit court confirmed, vacated, modified, or corrected would have to be taken in the same manner as from an order or judgment in other civil actions.

Proposed MCL 600.5070-600.5082

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Ortiz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.