

HOUSE BILL No. 4277

February 11, 1997, Introduced by Reps. Gubow, Anthony, Gire, Leland, Baade, Law, Kaza, Freeman, Martinez, Brewer, Dalman, Goschka, Middleton, Schroer and Baird and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9948) by adding chapter 50b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER 50B.

2 DOMESTIC RELATIONS ARBITRATION

3 SEC. 5070. THIS CHAPTER PROVIDES FOR AND GOVERNS ARBITRA-

4 TION IN DOMESTIC RELATIONS MATTERS. ARBITRATION PROCEEDINGS

5 UNDER THIS CHAPTER ARE ALSO GOVERNED BY COURT RULE EXCEPT TO THE

6 EXTENT THOSE PROVISIONS ARE MODIFIED BY THE ARBITRATION AGREEMENT

7 OR THIS CHAPTER. THIS CHAPTER CONTROLS IF THERE IS A CONFLICT

8 BETWEEN THIS CHAPTER AND CHAPTER 50.

9 SEC. 5071. PARTIES TO AN ACTION FOR DIVORCE, ANNULMENT,

10 SEPARATE MAINTENANCE, OR CHILD SUPPORT, CUSTODY, OR PARENTING

11 TIME, OR TO A POSTJUDGMENT PROCEEDING RELATED TO SUCH AN ACTION,

1 MAY STIPULATE TO BINDING ARBITRATION BY A SIGNED AGREEMENT THAT
2 SPECIFICALLY PROVIDES FOR AN AWARD WITH RESPECT TO 1 OR MORE OF
3 THE FOLLOWING ISSUES:

4 (A) REAL AND PERSONAL PROPERTY.

5 (B) CHILD CUSTODY.

6 (C) CHILD SUPPORT, SUBJECT TO THE RESTRICTIONS AND REQUIRE-
7 MENTS IN OTHER LAW AND COURT RULE AS PROVIDED IN THIS ACT.

8 (D) PARENTING TIME.

9 (E) SPOUSAL SUPPORT.

10 (F) COSTS, EXPENSES, AND ATTORNEY FEES.

11 (G) ENFORCEABILITY OF PRENUPTIAL AND POSTNUPTIAL
12 AGREEMENTS.

13 (H) ALLOCATION OF THE PARTIES' RESPONSIBILITY FOR DEBT AS
14 BETWEEN THE PARTIES.

15 (I) OTHER CONTESTED DOMESTIC RELATIONS MATTERS.

16 SEC. 5072. (1) A COURT SHALL NOT ORDER A PARTY TO PARTICI-
17 PATE IN ARBITRATION EXCEPT TO THE EXTENT THE PARTY HAS AGREED TO
18 PARTICIPATE UNDER A WRITTEN ARBITRATION AGREEMENT.

19 (2) IF THE PARTIES TO AN ACTION AGREE TO ARBITRATE AND THERE
20 ARE ALLEGATIONS OF DOMESTIC VIOLENCE, EACH PARTY SHALL BE REPRE-
21 SENTED BY AN ATTORNEY, AND THE COURT AND ATTORNEYS REPRESENTING
22 THE PARTIES SHALL ENSURE THAT EACH PARTY'S CONSENT TO ARBITRATE
23 OR TO A SUSPENSION OF THE FORMAL RULES OF EVIDENCE IS INFORMED
24 AND VOLUNTARY. IN SUCH A CASE, THE COURT SHALL PLACE EACH
25 PARTY'S CONSENT ON THE RECORD.

26 SEC. 5073. (1) ARBITRATION UNDER THIS CHAPTER MAY BE HEARD
27 BY A SINGLE ARBITRATOR OR BY A PANEL OF 3 ARBITRATORS. THE COURT

1 SHALL APPOINT AN ARBITRATOR AGREED TO BY THE PARTIES IF THE
2 ARBITRATOR IS QUALIFIED UNDER SUBSECTION (2) AND CONSENTS TO THE
3 APPOINTMENT. AN ARBITRATOR APPOINTED UNDER THIS CHAPTER IS
4 IMMUNE FROM LIABILITY IN REGARD TO THE ARBITRATION PROCEEDING TO
5 THE SAME EXTENT AS THE CIRCUIT JUDGE WHO HAS JURISDICTION OF THE
6 ACTION THAT IS SUBMITTED TO ARBITRATION.

7 (2) THE COURT SHALL NOT APPOINT AN ARBITRATOR UNDER THIS
8 CHAPTER UNLESS THE INDIVIDUAL MEETS ALL OF THE FOLLOWING
9 QUALIFICATIONS:

10 (A) IS AN ATTORNEY IN GOOD STANDING WITH THE STATE BAR OF
11 MICHIGAN.

12 (B) HAS PRACTICED AS AN ATTORNEY FOR NOT LESS THAN 5 YEARS
13 IMMEDIATELY PRECEDING THE APPOINTMENT AND HAS DEMONSTRATED AN
14 EXPERTISE IN THE AREA OF DOMESTIC RELATIONS LAW.

15 (C) HAS RECEIVED TRAINING IN HANDLING DOMESTIC RELATIONS
16 MATTERS THAT HAVE A HISTORY OF DOMESTIC VIOLENCE.

17 (3) THE OFFICE OF THE FRIEND OF THE COURT SHALL MAKE AVAIL-
18 ABLE A LIST OF ARBITRATORS WHO MEET THE QUALIFICATIONS OF THIS
19 SECTION. THE LIST SHALL INCLUDE A SUMMARY OF EACH ARBITRATOR'S
20 QUALIFICATIONS AND EXPERIENCE.

21 SEC. 5074. (1) AN ARBITRATOR APPOINTED UNDER THIS CHAPTER
22 SHALL HEAR AND MAKE AN AWARD ON EACH ISSUE SUBMITTED FOR ARBITRA-
23 TION UNDER THE ARBITRATION AGREEMENT SUBJECT TO THE PROVISIONS OF
24 THE AGREEMENT.

25 (2) AN ARBITRATOR APPOINTED UNDER THIS CHAPTER HAS ALL OF
26 THE FOLLOWING POWERS AND DUTIES:

1 (A) TO ADMINISTER AN OATH OR ISSUE A SUBPOENA AS PROVIDED BY
2 COURT RULE.

3 (B) TO ISSUE ORDERS REGARDING DISCOVERY PROCEEDINGS RELATIVE
4 TO THE ISSUES BEING ARBITRATED.

5 (C) TO ALLOCATE ARBITRATION FEES AND EXPENSES BETWEEN THE
6 PARTIES, INCLUDING IMPOSING A FEE OR EXPENSE ON A PARTY OR ATTOR-
7 NEY AS A SANCTION, SUBJECT TO PROVISIONS OF THE ARBITRATION
8 AGREEMENT.

9 (D) TO ENTER AN ORDER REQUIRING A PARTY TO PRODUCE SPECIFIED
10 INFORMATION THAT THE ARBITRATOR CONSIDERS RELEVANT TO, AND HELP-
11 FUL IN RESOLVING, AN ISSUE SUBJECT TO THE ARBITRATION.

12 (3) IF THE ARBITRATOR CONSIDERS IT RELEVANT TO AN ISSUE
13 BEING ARBITRATED, THE ARBITRATOR MAY ORDER THE FILING OF AN AFFI-
14 DAVIT THAT IDENTIFIES THE PARTY'S PLACE OF EMPLOYMENT AND OTHER
15 SOURCES OF INCOME, AND THAT LISTS THE ASSETS AND LIABILITIES OF
16 THE PARTIES. THE ARBITRATOR SHALL NOT RELEASE THE AFFIDAVITS
17 REQUIRED UNDER THIS SECTION UNTIL AFTER BOTH PARTIES HAVE FILED
18 THOSE AFFIDAVITS. THE ARBITRATOR SHALL ATTEMPT TO RELEASE THE
19 AFFIDAVITS TO THE OPPOSITE PARTIES AT APPROXIMATELY THE SAME
20 TIME.

21 (4) AN AFFIDAVIT ORDERED UNDER SUBSECTION (3) SHALL LIST AT
22 LEAST ALL OF THE FOLLOWING ASSETS:

23 (A) REAL PROPERTY.

24 (B) CHECKING AND SAVINGS ACCOUNT BALANCES, REGARDLESS OF THE
25 FORM IN WHICH THE MONEY IS HELD.

26 (C) STOCKS AND BONDS.

1 (D) INCOME TAX REFUNDS DUE THE PARTIES.
2 (E) LIFE INSURANCE.
3 (F) LOANS HELD AS A CREDITOR OR MONEY OWED TO THE PARTIES IN
4 WHATEVER FORM.
5 (G) RETIREMENT FUNDS AND PENSION BENEFITS.
6 (H) PROFESSIONAL LICENSES.
7 (I) MOTOR VEHICLES, BOATS, MOBILE HOMES, OR ANY OTHER TYPE
8 OF VEHICLE INCLUDING UNTITLED VEHICLES.
9 (J) EXTRAORDINARY TOOLS OF A TRADE.
10 (K) CEMETERY LOTS.
11 (L) OTHER ASSETS IN WHATEVER FORM.
12 (5) AN AFFIDAVIT ORDERED UNDER SUBSECTION (3) SHALL LIST AT
13 LEAST ALL OF THE FOLLOWING LIABILITIES:
14 (A) SECURED AND UNSECURED CREDITS.
15 (B) TAXES.
16 (C) RENTS AND SECURITY DEPOSITS.
17 (D) ALL OTHER LIABILITIES IN WHATEVER FORM.
18 SEC. 5075. (1) AN ARBITRATOR, ATTORNEY, OR PARTY IN AN
19 ARBITRATION PROCEEDING UNDER THIS CHAPTER SHALL DISCLOSE ANY CIR-
20 CUMSTANCE THAT MAY AFFECT AN ARBITRATOR'S IMPARTIALITY, INCLUD-
21 ING, BUT NOT LIMITED TO, BIAS, A FINANCIAL OR PERSONAL INTEREST
22 IN THE OUTCOME OF THE ARBITRATION, OR A PAST OR PRESENT BUSINESS
23 OR PROFESSIONAL RELATIONSHIP WITH A PARTY OR ATTORNEY. UPON DIS-
24 CLOSURE OF SUCH A CIRCUMSTANCE, A PARTY MAY REQUEST DISQUALIFICA-
25 TION OF THE ARBITRATOR. IF THE ARBITRATOR DOES NOT WITHDRAW
26 WITHIN 14 DAYS AFTER A REQUEST FOR DISQUALIFICATION, THE PARTY
27 MAY FILE A MOTION FOR DISQUALIFICATION WITH THE CIRCUIT COURT.

1 (2) THE CIRCUIT COURT SHALL HEAR A MOTION UNDER SUBSECTION
2 (1) WITHIN 21 DAYS AFTER THE MOTION IS FILED. IF THE COURT FINDS
3 THAT THE ARBITRATOR IS DISQUALIFIED, THE COURT MAY APPOINT
4 ANOTHER ARBITRATOR AGREED TO BY THE PARTIES OR MAY VOID THE ARBI-
5 TRATION AGREEMENT AND PROCEED AS IF ARBITRATION HAD NOT BEEN
6 ORDERED.

7 SEC. 5076. (1) AS SOON AS PRACTICABLE AFTER THE APPOINTMENT
8 OF THE ARBITRATOR, THE PARTIES AND ATTORNEYS SHALL MEET WITH THE
9 ARBITRATOR TO CONSIDER ALL OF THE FOLLOWING:

10 (A) SCOPE OF THE ISSUES SUBMITTED.

11 (B) DATE, TIME, AND PLACE OF THE HEARING.

12 (C) WITNESSES, INCLUDING EXPERTS, WHO MAY TESTIFY.

13 (D) SCHEDULE FOR EXCHANGE OF EXPERT REPORTS OR SUMMARY OF
14 EXPERT TESTIMONY.

15 (E) SUBJECT TO SUBSECTION (2), EXHIBITS, DOCUMENTS, OR OTHER
16 INFORMATION EACH PARTY CONSIDERS MATERIAL TO THE CASE AND A
17 SCHEDULE FOR PRODUCTION OR EXCHANGE OF THE INFORMATION. AN
18 OBJECTION NOT MADE BEFORE THE HEARING TO PRODUCTION OR LACK OF
19 PRODUCTION OF INFORMATION IS WAIVED.

20 (F) DISCLOSURE REQUIRED UNDER SECTION 5075.

21 (2) THE ARBITRATOR SHALL ORDER REASONABLE ACCESS TO INFORMA-
22 TION THAT IS MATERIAL TO THE ARBITRATION ISSUES INCLUDING, AT A
23 MINIMUM, FROM EACH PARTY ALL OF THE FOLLOWING:

24 (A) A CURRENT, COMPLETE, AND ACCURATE SWORN FINANCIAL DIS-
25 CLOSURE STATEMENT.

26 (B) FINANCIAL DISCLOSURE STATEMENTS FOR THE PAST 5 YEARS.

1 (C) STATE AND FEDERAL INCOME TAX RETURNS FOR THE PREVIOUS 3
2 YEARS OR OTHER TIME PERIOD AS ORDERED BY THE ARBITRATOR.

3 (D) IF A COURT HAS ISSUED AN ORDER CONCERNING AN ISSUE
4 SUBJECT TO ARBITRATION, A COPY OF THE ORDER, STATE AND FEDERAL
5 INCOME TAX RETURNS FOR THE YEAR THE ORDER WAS ISSUED, AND A
6 FINANCIAL STATEMENT FOR THE TIME AT WHICH THE ORDER WAS ENTERED,
7 WHICH STATEMENT INCLUDES AT LEAST GROSS AND NET INCOME AND ASSETS
8 AND LIABILITIES.

9 (E) PROPOSED AWARD FOR EACH ISSUE SUBJECT TO ARBITRATION.

10 SEC. 5077. (1) EXCEPT AS PROVIDED BY THIS SECTION, COURT
11 RULE, OR THE ARBITRATION AGREEMENT, A RECORD SHALL NOT BE MADE OF
12 AN ARBITRATION HEARING UNDER THIS CHAPTER. IF A RECORD IS NOT
13 REQUIRED, AN ARBITRATOR MAY MAKE A RECORD TO BE USED ONLY BY THE
14 ARBITRATOR TO AID IN REACHING THE DECISION.

15 (2) A RECORD SHALL BE MADE OF THAT PORTION OF A HEARING THAT
16 CONCERNS CHILD SUPPORT, CUSTODY, OR PARENTING TIME IN THE SAME
17 MANNER REQUIRED BY THE MICHIGAN COURT RULES FOR THE RECORD OF A
18 WITNESS'S TESTIMONY IN A DEPOSITION.

19 SEC. 5078. (1) UNLESS OTHERWISE AGREED BY THE PARTIES AND
20 ARBITRATOR IN WRITING OR ON THE RECORD, THE ARBITRATOR SHALL
21 ISSUE THE WRITTEN AWARD ON EACH ISSUE WITHIN 60 DAYS AFTER THE
22 END OF THE HEARING AND AFTER RECEIPT OF FINDINGS OF FACT AND CON-
23 CLUSIONS OF LAW IF REQUESTED BY THE ARBITRATOR.

24 (2) SUBJECT TO THE OTHER RESTRICTIONS IN THIS SUBSECTION, IF
25 THE PARTIES REACH AN AGREEMENT REGARDING CHILD SUPPORT, CUSTODY,
26 OR PARENTING TIME, THE AGREEMENT SHALL BE PLACED ON THE RECORD BY
27 THE PARTIES UNDER OATH AND SHALL BE INCLUDED IN THE ARBITRATOR'S

1 WRITTEN AWARD. AN ARBITRATOR SHALL NOT INCLUDE IN THE AWARD A
2 CHILD SUPPORT AMOUNT THAT DEVIATES FROM THE CHILD SUPPORT FORMULA
3 DEVELOPED BY THE STATE FRIEND OF THE COURT BUREAU UNLESS THE
4 ARBITRATOR COMPLIES WITH THE SAME REQUIREMENTS FOR SUCH A DEVIA-
5 TION PRESCRIBED FOR THE COURT UNDER THE LAW THAT APPLIES TO THE
6 DOMESTIC RELATIONS DISPUTE THAT IS BEING ARBITRATED.

7 (3) THE ARBITRATOR RETAINS JURISDICTION TO CORRECT ERRORS OR
8 OMISSIONS IN AN AWARD UPON MOTION BY A PARTY TO THE ARBITRATOR
9 WITHIN 14 DAYS AFTER THE AWARD IS ISSUED. ANOTHER PARTY TO THE
10 ARBITRATION MAY RESPOND TO THE MOTION WITHIN 7 DAYS AFTER THE
11 MOTION IS MADE. THE ARBITRATOR SHALL MAKE A DECISION ON THE
12 MOTION WITHIN 7 DAYS AFTER THE EXPIRATION OF THE RESPONSE TIME
13 PERIOD.

14 SEC. 5079. (1) THE CIRCUIT COURT SHALL ENFORCE AN
15 ARBITRATOR'S AWARD OR OTHER ORDER ISSUED UNDER THIS CHAPTER IN
16 THE SAME MANNER AS AN ORDER ISSUED BY THE CIRCUIT COURT. A PARTY
17 MAY MAKE A MOTION TO THE CIRCUIT COURT TO ENFORCE AN ARBITRATOR'S
18 AWARD OR ORDER.

19 (2) THE PLAINTIFF IN AN ACTION THAT WAS SUBMITTED TO ARBI-
20 TRATION UNDER THIS CHAPTER SHALL FILE WITH THE CIRCUIT COURT A
21 JUDGMENT, ORDER, OR MOTION TO SETTLE THE JUDGMENT WITHIN 21 DAYS
22 AFTER THE ARBITRATOR'S AWARD IS ISSUED UNLESS OTHERWISE AGREED TO
23 BY THE PARTIES IN WRITING OR UNLESS THE ARBITRATOR OR COURT
24 GRANTS AN EXTENSION. IF THE PLAINTIFF FAILS TO COMPLY WITH THIS
25 SUBSECTION, ANOTHER PARTY TO THE ACTION MAY FILE A JUDGMENT,
26 ORDER, OR MOTION TO SETTLE THE JUDGMENT AND MAY REQUEST
27 SANCTIONS.

1 SEC. 5080. (1) IF A PARTY APPLIES TO THE CIRCUIT COURT FOR
2 VACATION OR MODIFICATION OF AN ARBITRATOR'S AWARD ISSUED UNDER
3 THIS CHAPTER THAT CONCERNS CHILD SUPPORT, CUSTODY, OR PARENTING
4 TIME, THE COURT SHALL REVIEW THE AWARD BASED ONLY UPON THE RECORD
5 OF THE ARBITRATION HEARING. EXCEPT AS PROVIDED IN SUBSECTION
6 (2), THE CIRCUIT COURT SHALL NOT VACATE OR MODIFY AN AWARD CON-
7 CERNING CHILD SUPPORT, CUSTODY, OR PARENTING TIME UNLESS THE
8 COURT FINDS THAT THE AWARD IS ADVERSE TO THE BEST INTERESTS OF
9 THE CHILD WHO IS THE SUBJECT OF THE AWARD.

10 (2) A REVIEW OR MODIFICATION OF A CHILD SUPPORT AMOUNT SHALL
11 BE CONDUCTED AND IS SUBJECT TO THE STANDARDS AND PROCEDURES PRO-
12 VIDED IN OTHER STATUTES AND BY COURT RULE THAT ARE APPLICABLE TO
13 CHILD SUPPORT AMOUNTS.

14 (3) OTHER STANDARDS AND PROCEDURES REGARDING REVIEW OF ARBI-
15 TRATION AWARDS DESCRIBED IN THIS SECTION ARE GOVERNED BY COURT
16 RULE.

17 SEC. 5081. (1) IF A PARTY APPLIES TO THE CIRCUIT COURT FOR
18 VACATION OR MODIFICATION OF AN ARBITRATOR'S AWARD ISSUED UNDER
19 THIS CHAPTER THAT CONCERNS OTHER THAN CHILD SUPPORT, CUSTODY, OR
20 PARENTING TIME, THE COURT SHALL REVIEW THE AWARD AS PROVIDED IN
21 THIS SECTION.

22 (2) IF A PARTY APPLIES UNDER THIS SECTION, THE COURT SHALL
23 VACATE AN AWARD UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

24 (A) THE AWARD WAS PROCURED BY CORRUPTION, FRAUD, OR OTHER
25 UNDUE MEANS.

1 (B) THERE WAS EVIDENT PARTIALITY BY AN ARBITRATOR APPOINTED
2 AS A NEUTRAL, CORRUPTION OF AN ARBITRATOR, OR MISCONDUCT
3 PREJUDICING A PARTY'S RIGHTS.

4 (C) THE ARBITRATOR EXCEEDED HIS OR HER POWERS.

5 (D) THE ARBITRATOR REFUSED TO POSTPONE THE HEARING ON A
6 SHOWING OF SUFFICIENT CAUSE, REFUSED TO HEAR EVIDENCE MATERIAL TO
7 THE CONTROVERSY, OR OTHERWISE CONDUCTED THE HEARING TO PREJUDICE
8 SUBSTANTIALLY A PARTY'S RIGHTS.

9 (3) THE FACT THAT THE RELIEF GRANTED IN AN ARBITRATION AWARD
10 COULD NOT BE GRANTED BY A COURT OF LAW OR EQUITY IS NOT GROUNDS
11 FOR VACATING OR REFUSING TO CONFIRM THE AWARD.

12 (4) AN APPLICATION TO VACATE AN AWARD ON GROUNDS STATED IN
13 SUBSECTION (2)(A) SHALL BE MADE WITHIN 21 DAYS AFTER THE GROUNDS
14 ARE KNOWN OR SHOULD HAVE BEEN KNOWN. IF AN AWARD IS VACATED ON
15 GROUNDS STATED IN SUBSECTION (2)(C) OR (D), THE COURT MAY ORDER A
16 REHEARING BEFORE THE ARBITRATOR WHO MADE THE AWARD.

17 (5) OTHER STANDARDS AND PROCEDURES RELATING TO REVIEW OF
18 ARBITRATION AWARDS DESCRIBED IN SUBSECTION (1) ARE GOVERNED BY
19 COURT RULE.

20 SEC. 5082. AN APPEAL FROM AN ARBITRATION AWARD UNDER THIS
21 CHAPTER THAT THE CIRCUIT COURT CONFIRMS, VACATES, MODIFIES, OR
22 CORRECTS SHALL BE TAKEN IN THIS SAME MANNER AS FROM AN ORDER OR
23 JUDGMENT IN OTHER CIVIL ACTIONS.