

**PROPOSED MASSACHUSETTS FAMILY LAW ARBITRATION ACT  
MASSACHUSETTS CHAPTER OF THE AMERICAN ACADEMY OF  
MATRIMONIAL LAWYERS**

**(Approved by Board of Managers January 25, 2012)**

**1. §101. Purpose; definitions**

(a) It is the policy of this State to allow, by agreement of all parties, the arbitration of all issues arising from a marital separation or divorce, except for the granting of a divorce itself, while preserving a right of modification based on substantial and material changes of circumstances and other existing law related to alimony, child custody, and child support. Pursuant to this policy, the purpose of this Act is to provide for arbitration as an efficient and speedy means of resolving these disputes, consistent with family law and related law of this Commonwealth, to provide default rules for the conduct of arbitration proceedings, and to assure access to the courts of this Commonwealth for proceedings ancillary to arbitration.

(b) In this Act:

(1) “Agreement” means a written agreement signed by the parties on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(2) “Arbitration organization” means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(3) “Arbitrator” means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(4) “Court” means a court of competent jurisdiction in this State.

(5) “Knowledge” means actual knowledge.

(6) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

## **2. §2. Notice**

(a) Except as otherwise provided in this Act, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in the ordinary course, whether or not the other person acquires knowledge of the notice.

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

(c) A person receives notice when action is taken in conformity with law or rule of court that regulates the service of motions in pending cases [presently Mass. R. Dom. Rel. P. 5(b)].

## **3. §103. When Act applies**

(a) This Act governs an agreement to arbitrate made on or after the effective date of this Act.

(b) This Act governs an agreement to arbitrate made before the effective date of this Act if all the parties to the agreement or to the arbitration proceeding so agree by a written agreement.

(c) On or after [delayed date], this Act governs an agreement to arbitrate whenever made.

#### **4. §104. Effect of agreement to arbitrate; nonwaivable provisions**

(a) Except as otherwise provided in subsections (b) and (c), a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this Act to the extent otherwise permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) waive or agree to vary the effect of the requirements of Sections 105(a), 106(a), 108(a), 108(b), 117(a), 117(b) or 126;

(2) agree to unreasonably restrict the right under Section 109 to notice of the initiation of an arbitration proceeding;

(3) agree to unreasonably restrict the right under Section 112 to disclosure of any facts by a neutral arbitrator; or

(4) waive the right under Section 116 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this Act.

(c) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties shall not vary the effect of, the requirements of this section or Sections 103(a) or 103(c), 107, 108(c), 108(d), 108(e), 114, 118, 120(d), 122, 123, 124, 124A, 125(a), 125(b), 128, 192, 130, 131, or 132.

**5. §105. Motion for judicial relief**

(a) Except as otherwise provided in section 128, a motion for judicial relief under this Act must be made by to the court and heard in the manner provided by law or rule of court for making and hearing of motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this Act must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner prescribed by law or rule of court for serving motions in pending cases.

**6. §106. Validity of agreement to arbitrate.**

(a) After marriage, parties may agree by written agreement to submit to arbitration any controversy in a pending action arising out of the marital relationship except for the granting of a divorce itself. Such a written agreement to submit to arbitration any existing or subsequent controversy arising between the parties to the

agreement is valid, enforceable, and irrevocable except upon a written agreement of the parties or for a ground that exists at law or in equity for revocation of a contract.

(b) If a party disputes the existence of a written agreement to arbitrate, the court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) 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.

**7. §107. Motion to compel or stay arbitration.**

(a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) if the refusing party does not appear or does not oppose the [motion], the court shall order the parties to arbitrate; and

(2) if the refusing party opposes the motion, the court shall hold a hearing to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed to promptly decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement to arbitrate, it shall not pursuant to subsection (a) or (b) order the parties to arbitrate.

(d) The court shall not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in a court, a motion under this section must be made in that court. Otherwise a motion under this section may be made in any court as provided in Section 127.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on terms that promote the interests of justice shall stay any judicial proceeding that involves a claim subject to arbitration. If a claim subject to the arbitration is severable, the court may limit the stay on that claim.

**8. §108. Provisional remedies.**

(a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) the arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action and

(2) a party to an arbitration proceeding may move the court for a provisional remedy if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(c) Availability of provisional remedies under this section may be limited by the parties' prior written agreement as provided in Section 104, except for relief pursuant to the Commonwealth's statutes and law granting immediate, emergency relief or protection for spouses or children; federal law; or treaties to which the United States is a party, whose purpose is to provide immediate, emergency relief or protection.

(d) No agreement to arbitrate shall inhibit, prohibit or sanction an arbitrator from or for filing a report of suspected abuse or neglect of a child or an elder pursuant to [insert statutes].

(e) A party does not waive a right of arbitration by making a motion under subsection (a) or (b).

9. **§109. Initiation of arbitration.**

(a) A person initiates an arbitration proceeding by giving notice to the other parties to the agreement to arbitrate in the agreed manner between the parties, or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under Section 15(c) no later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack or insufficiency of notice.

10. **§110. Consolidation of separate arbitration proceedings.**

(a) Except as otherwise provided in subsection (c), upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) there are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration with a third person;

(2) the claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

#### **11. § 111. Appointment of arbitrator; service as a neutral arbitrator**

(a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

## **12. § 112. 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 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 financial or personal interest in the outcome of the arbitration proceeding; and

(2) an existing or past relationship with any of the parties to the agreement to arbitrate or 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 an arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which 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) to be disclosed and a party timely objects to the appointment or continued service of the

arbitrator based upon the fact disclosed, the objection may be a ground under Section 123(a)(2) for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b), upon timely objection by a party, the court under Section 123(a)(2) may vacate an award.

(e) An arbitrator appointed as a neutral 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 Section 123(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization 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 that ground under Section 123(a)(2).

### **13. § 113. Action by majority**

If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under Section 115(c).

### **14. § 114. Immunity of arbitrator; competency to testify; attorney's fees and costs**

(a) An arbitrator or an arbitration organization acting in that capacity 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 afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by Section 112 does not cause any loss of immunity under this section.

(d) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this State acting in a judicial capacity. This subsection does not apply:

(1) to the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(2) to a hearing on a motion to vacate an award under Sections 123(a)(1) or 123(a)(2) if the movant establishes prima facie that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative, or if a person seeks to compel an

arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (d), and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court may award to the arbitrator, organization, or representative reasonable attorney's fees, costs, and other reasonable expenses of litigation.

### **15. § 115. Arbitration process**

(a) An arbitrator may conduct an arbitration in such a manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties of the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue to the same extent permitted by Mass. R. Dom. Rel. P. 56 upon motion of a party.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins.

Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the

arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified did not appear. The court, upon request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c), a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with Section 111 to continue the proceeding and to resolve the controversy.

## **16. § 116. Representation by lawyer**

A party to an arbitration proceeding may be represented by a lawyer or lawyers.

## **17. § 117. Witnesses; subpoenas; depositions; discovery**

(a) With notice to all parties to the agreement to arbitrate, 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 the civil action and, upon motion to

the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of the 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 for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in 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), 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 Commonwealth.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this State and for the protection 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 Commonwealth and, upon motion 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.

#### **18. § 118. Judicial enforcement of preaward ruling by arbitrator**

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under Section 119. A prevailing party may make a motion to the court for an expedited order to confirm the award under Section 122, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award

unless the court vacates, modifies, or corrects the award under Sections 123, 124 and 124A.

**19. § 119. Award**

(a) An arbitrator shall make a written award. The award must be signed or otherwise authenticated as authorized by federal or State law by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a writing to expand the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless that party gives notice of the objection to the arbitrator before receiving notice of the award.

(c) Unless the parties agree otherwise in a record, the arbitrator shall render a reasoned award.

**20. § 120. Change of award by arbitrator**

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) upon a ground stated in Sections 124(a)(1) or 124(a)(3);

(2) because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) to clarify the award.

(b) A motion under subsection (a) must be made and notice given to all parties within 20 days after the movant receives notice of the award.

(c) A party to the arbitration proceeding must give notice of any objection to the motion within 10 days after receipt of the notice.

(d) If a [motion] to the court is pending under Sections 122, 123, 124 or 124A, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) upon a ground stated in Sections 124(a)(1) or 124(a)(3);

(2) because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) to clarify the award.

(e) An award modified or corrected pursuant to this section is subject to Sections 119(a), 122, 123, 124, and 124A.

20. § 120. **Change of award by arbitrator**

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) upon a ground stated in Sections 124(a)(1) or 124(a)(3);

- (2) because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
  - (3) to clarify the award.
- (b) A motion under subsection (a) must be made and notice given to all parties within 20 days after the movant receives notice of the award.
- (c) A party to the arbitration proceeding must give notice of any objection to the motion within 10 days after receipt of the notice.
- (d) If a motion to the court is pending under Sections 122, 123, 124 or 124A, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:
  - (1) upon a ground stated in Sections 124(a)(1) or 124(a)(3);
  - (2) because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
  - (3) to clarify the award.
- (e) An award modified or corrected pursuant to this section is subject to Sections 119(a), 122, 123, 124 and 124A.

**21. § 121. Remedies: fees and expenses of arbitration proceeding**

- (a) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration, including some or all of the

arbitrator's fees, if such an award is authorized by law in an action involving the same claim or by the agreement of the parties to the arbitration proceeding.

- (b) As to all remedies other than those authorized by subsection (a), an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding and which a court would be permitted to make under the same action and circumstances.
- (c) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

**22. § 122. Confirmation of award**

After a party to an arbitration receives notice of an award, the party may make a motion to the court for an order confirming the award, at which time the court shall issue a confirming order unless the parties agree in a written agreement that part or all of an award shall not be confirmed by the court, except to the extent that the award is modified or corrected pursuant to Sections 120, 124 and 124A, or the award is vacated pursuant to Section 123.

**23. § 123. Vacating award**

- (a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

- (1) the award was procured by corruption, fraud, or other undue means;
- (2) there was:
  - (A) evident partiality by an arbitrator;
  - (B) corruption by an arbitrator; or
  - (C) misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- (3) an arbitrator exceeded the arbitrator's powers;
- (4) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objections under Section 115(c) not later than the beginning of the arbitration hearing;
- (5) the arbitration was conducted without proper notice of the initiation of an arbitration as required in Section 109 so as to prejudice substantially the rights of a party to the arbitration proceeding;
- (6) the court determines that the award for child support is not in the best interest of the child(ren); or
- (7) if the parties contract in an agreement to arbitrate 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 or an

abuse of discretion that would otherwise lead to reversal if rendered by a court.

- (b) A motion under this section must be filed within 20 days after the movant receives notice of the award pursuant to Section 119 or within 20 days after the movant receives notice of a modified or corrected award pursuant to Section 120, unless the movant alleges that the award was procured by corruption, fraud or other undue means, in which case the motion must be made within 60 days after the ground is known or by the exercise of reasonable care would have been known by the movant, but in any event within one year after the date of the award.
- (c) If the court vacates an award on a ground other than that set forth in subsection (a)(5), it may order a rehearing. If the award is vacated on a ground stated in subsections (a)(1) or (2), the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subsections (a)(3), (4), or (6), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in Section 119(b) for an award.

- (d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award pursuant to Sections 124 or 124A is pending.

24. **§ 124. Modification or correction of award**

- (a) Upon motion made within 20 days after the movant receives notice of the award pursuant to Section 119 or within 20 days after the movant receives notice of a modified or corrected award pursuant to Section 120, the court shall modify or correct the award if:
  - (1) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;
  - (2) the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision on the claims submitted;  
or
  - (3) the award is imperfect in a matter or form not affecting the merits of the claims submitted.
- (b) If a motion made under subsection (a) is granted, the court shall modify and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

- (c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

**24A. § 124A. Modification of award for alimony, child support, or child custody based on substantial change or circumstances**

- (a) A court or arbitrators may modify an award for alimony, child support or child custody under conditions in which a court would be permitted to do so with respect to a judgment entered by a court notwithstanding arbitration.
- (b) An award by arbitrators for alimony may be modified by a Court pursuant to a complaint for modification.
- (c) An award by arbitrators for child support or child custody may be modified by a Court pursuant to a complaint for modification.
- (d) If an award for alimony, or an award for child support or custody has not been confirmed pursuant to Section 122, upon the parties' agreement these matters may be submitted to arbitrators chosen by the parties as provided in Section 111, in which case Sections 120 and 122 through 124A apply to this modified award.
- (e) If an award for alimony, or an award for child support or custody has been confirmed pursuant to Section 122, upon the parties' agreement and joint motion the court may remit these matters to arbitrators chosen by the parties as provided in Section 111, in which case

Sections 120 and 122 through 124A shall apply to this modified award.

- (f) Except as otherwise provided in this section, the provisions of Section 124 apply to modifications or corrections of awards for alimony, child support or child custody.

**25. § 125. Judgment on award; attorneys' fees and litigation expense**

- (a) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment shall be recorded, docketed, and enforced as any other judgment in an action.
- (b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.
- (c) On motion of a party for good cause shown to a contested judicial proceeding under Sections 122, 123, 124 or 124A, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.
- (d) Consistent with the general rules and law of impoundment, the court in its discretion may order that any arbitration award or order or any judgment or court order entered as a court order or judgment

pursuant to this Act, or any part of such arbitration award or judgment or court order, be impounded.

**26. § 126. Jurisdiction**

(a) A court of this Commonwealth having jurisdiction over the controversy and the parties may enforce the agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this Commonwealth confers exclusive jurisdiction on the court to enter judgment on an award under this Act.

**27. § 127. Venue**

A motion pursuant to Section 105 must be made in the court of the county in which the action from which the arbitration arises may be heard.

**28. § 128. Appeals**

(a) An appeal may be taken from:

- (1) an order denying a motion to compel arbitration;
- (2) an order granting a motion to stay arbitration;
- (3) an order confirming or denying confirmation of an award;
- (4) an order modifying or correcting an award;
- (5) an order vacating an award without directing a rehearing; or
- (6) a final judgment entered pursuant to this Act.

(b) Unless the parties contract in an agreement to arbitrate for judicial review of errors of law or abuse of discretion as provided in Section 123(a)(9),

a party may not appeal on the basis that the arbitrator failed to apply correctly the law applicable to the action being heard.

(c) An appeal under this Section shall be taken as from an order or a judgment in a civil action.

**29. § 131. Effective date**

This Act takes effect on [effective date].

**30. § 133. Savings clause**

This Act does not affect an action or proceeding commenced or right accrued before this Act takes effect, unless the parties otherwise agree in written agreement. Subject to Section 3 of this Act, an arbitration agreement made before the effective date of this Act is governed by then applicable law.

**31. § 134. Short title**

This Act may be cited as the Massachusetts Family Law Arbitration Act.