

HOUSE No. 1630

The Commonwealth of Massachusetts

PRESENTED BY:

Sheila C. Harrington

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to adopt the uniform family law arbitration act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	<i>1/21/2021</i>

HOUSE No. 1630

By Mrs. Harrington of Groton, a petition (accompanied by bill, House, No. 1630) of Sheila C. Harrington relative to uniform family law arbitration. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3324 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act to adopt the uniform family law arbitration act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. SHORT TITLE.

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

3 SECTION 2. DEFINITIONS. In this act:

4 (a) “Arbitration agreement” means an agreement that subjects a family law dispute to
5 arbitration.

6 (b) “Arbitration organization” means an association, agency, board, commission, or
7 other entity that is neutral and initiates, sponsors, or administers an arbitration or is involved in
8 the selection of an arbitrator.

9 (c) “Arbitrator” means an individual selected or appointed, alone or with others, to
10 make an award in a family law dispute that is subject to an arbitration agreement.

11 (d) “Award” means any interim award, temporary order or final disposition of any
12 family law dispute by an arbitrator.

13 (e) “Child-related dispute” means a family law dispute regarding legal custody,
14 physical custody, custodial responsibility, parental responsibility or authority, parenting time,
15 right to access, other parenting plan matter; and/or financial support regarding a child.

16 (f) “Court” means the Probate and Family Court Department of the Massachusetts
17 Trial Court, or in the case of contractual provisions, the Superior Court Department and/or
18 District Court Department.

19 (g) “Family law dispute” means a contested issue arising under the family law
20 statutes and case law of this commonwealth, including without limitation, M.G.L., chs. 207, 208,
21 209, 209B, 209C, 209D and where applicable, ch. 215, §6.

22 (h) “Party” means an individual who signs an arbitration agreement and whose rights
23 will be determined by an award.

24 (i) “Person” means an individual, estate, business or nonprofit entity, public
25 corporation, government or governmental subdivision, agency, or instrumentality, or any other
26 legal entity.

27 (j) “Record”, used as a noun, means information that is inscribed on a tangible
28 medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

29 (k) “Sign” means, with present intent to authenticate or adopt a record:

- 30 (1) to execute or adopt a tangible symbol; or
- 31 (2) to attach to or logically associate with the record an electronic symbol, sound, or
- 32 process.

33 (1) “State” means a state of the United States, the District of Columbia, Puerto Rico,

34 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction

35 of the United States. The term includes a federally recognized Indian tribe.

36 SECTION 3. SCOPE.

- 37 (a) This act governs arbitration of a family law dispute.
- 38 (b) This act does not authorize an arbitrator to make an award that:
- 39 (1) grants a judgment of separate support, divorce or annulment;
- 40 (2) terminates parental rights;
- 41 (3) grants an adoption or a guardianship of a child or incapacitated individual; or
- 42 (4) determines the status of a child, elder or incapacitated person in need of care and
- 43 protection.

44 SECTION 4. APPLICABLE LAW.

45 (a) Except as otherwise provided in this act, the law applicable to arbitration is

46 M.G.L. ch. 251, the statutes in section 6 above, case law of the commonwealth, the

47 Massachusetts Rules of Domestic Relations Procedure (Mass. Dom. Rel. P.) and other rules of

48 the Probate and Family Court and where applicable, the Massachusetts Rules of Civil Procedure
49 (Mass. R. Civ. P.) and rules of the rule of other Trial Court Departments.

50 (b) Except as otherwise provided in the parties' arbitration agreement, in determining
51 the merits of a family law dispute, an arbitrator shall apply the law of this commonwealth,
52 including its choice of law rules.

53 SECTION 5. ARBITRATION AGREEMENT.

54 (a) An arbitration agreement must:

55 (1) be in a record signed by the parties;

56 (2) identify the arbitrator, an arbitration organization, and/or a method of selecting an
57 arbitrator or replacement arbitrator; and

58 (3) identify the family law dispute(s) that the parties agree to arbitrate.

59 (b) An agreement in a record to arbitrate a family law dispute that arises between the
60 parties before, at the time, or after the agreement is made, is valid and enforceable as any other
61 contract and irrevocable, except:

62 (1) for a cause that exists at law or in equity for the rescission or reformation of a
63 contract; or

64 (2) if a party who opposes enforcement of the agreement, did not have counsel at the
65 time of execution, and was not questioned by a judge about his or her understanding of the
66 arbitration terms of the agreement to determine that the party understood the meaning of those

67 terms, and that he or she entered the agreement voluntarily, before the judge approved those
68 terms; or

69 (3) if circumstances have occurred after the execution of the agreement that a court
70 finds would negate the voluntariness of the agreement if the party opposing enforcement were
71 entering into the agreement at the time of enforcement; and

72 (4) for a child-related dispute, the parties do not affirm the agreement in a record after
73 the dispute arises, or a court determines that enforcement no longer serves a child's best
74 interests.

75 (c) If a party objects to arbitration on the ground the arbitration agreement is
76 unenforceable or the agreement does not include a family law dispute, the court shall decide
77 whether the agreement is enforceable or includes the family law dispute.

78 SECTION 6. NOTICE OF ARBITRATION.

79 (a) A party may initiate arbitration by giving notice to arbitrate to the other party in
80 the manner specified in the arbitration agreement or, in the absence of a specified manner, under
81 the law and procedural rules of this commonwealth governing contractual arbitration.

82 SECTION 7. REQUEST FOR JUDICIAL RELIEF.

83 (a) A request made by complaint, petition or motion for judicial relief under this act
84 must be made to the court in which a proceeding is pending involving a family law dispute
85 subject to arbitration or, if no proceeding is pending, a court with jurisdiction over the parties and
86 the subject matter.

87 (b) On request made by complaint, petition or motion of a party, the court may
88 compel arbitration if the parties have entered into an arbitration agreement that complies with
89 Section 5(a), unless the court determines under Sections 5(b), 5(c), or Section 12 that the
90 arbitration should not proceed.

91 (c) On request made by complaint, petition or motion of a party, the court shall
92 terminate arbitration if it determines that:

93 (1) the agreement to arbitrate is unenforceable;

94 (2) the family law dispute is not subject to arbitration; or

95 (3) under Sections 5(b), 5(c), or 12, the arbitration should not proceed.

96 (d) Unless prohibited by an arbitration agreement, on motion of a party, the court
97 may order consolidation of separate arbitrations involving the same parties and a common issue
98 of law or fact if necessary for the fair and expeditious resolution of the family law dispute.

99 SECTION 8. QUALIFICATION AND SELECTION OF ARBITRATOR.

100 (a) Except as otherwise provided in subsection (b), unless waived in a record by the
101 parties, an arbitrator must be:

102 (1) an attorney in good standing admitted to practice on “active” status under the laws
103 of the commonwealth or equivalent in another state; and

104 (2) trained in providing family law arbitration and in identifying domestic violence,
105 which requirement may be satisfied by attending any training program approved or established
106 by the chief justice of the probate and family court department for any purpose.

107 (b) The identification in the arbitration agreement of an arbitrator, arbitration
108 organization, or method of selection of the arbitrator controls.

109 (c) If an arbitrator is unable or unwilling to act or if the agreed-on method of
110 selecting an arbitrator fails, on motion of a party, the court shall select an arbitrator who meets
111 the requirements of sub-paragraph (a) of this paragraph 8.

112 SECTION 9. DISCLOSURE BY ARBITRATOR; DISQUALIFICATION.

113 (a) Before agreeing to serve as an arbitrator, an individual, after making reasonable
114 inquiry, shall disclose to all parties any known fact a reasonable person would believe is likely to
115 affect:

116 (1) the impartiality of the arbitrator in the arbitration, including bias, a financial or
117 personal interest in the outcome of the arbitration, or an existing or past relationship with a party,
118 attorney representing a party, or witness; or

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

120 (b) An arbitrator, the parties, and the attorneys representing the parties have a
121 continuing obligation to disclose to all parties any known fact a reasonable person would believe
122 is likely to affect the impartiality of the arbitrator or the arbitrator's ability to make a timely
123 award.

124 (c) An objection to the selection or continued service of an arbitrator and a motion for
125 a stay of arbitration and disqualification of the arbitrator must be made under the law and
126 procedural rules of this commonwealth governing arbitrator disqualification.

127 (d) If a disclosure required by subsection (a)(1) or (b) is not made, the court may:

128 (1) on motion of a party not later than 30 days after the failure to disclose is known or
129 by the exercise of reasonable care should have been known to the party, suspend the arbitration;

130 (2) on timely motion of a party, vacate an award under Section 19(a)(2); or

131 (3) if an award has been confirmed, grant other appropriate relief under law of this
132 commonwealth.

133 (e) If the parties agree to discharge an arbitrator or the arbitrator is disqualified, the
134 parties by agreement may select a new arbitrator or request the court to select another arbitrator
135 as provided in Section 8.

136 SECTION 10. PARTY PARTICIPATION.

137 (a) A party may:

138 (1) be represented in an arbitration by an attorney;

139 (2) be accompanied by an individual who will not be called as a witness or act as an
140 advocate; and

141 (3) participate in the arbitration to the full extent permitted under the law and
142 procedural rules of this commonwealth governing a party's participation in contractual
143 arbitration.

144 (b) A party or representative of a party may not communicate ex parte with the
145 arbitrator except to the extent permitted by the agreement to arbitrate.

146 SECTION 11. TEMPORARY ORDER OR AWARD.

147 (a) Before an arbitrator is selected and able to act, on motion of a party, the court may
148 enter temporary orders under M.G.L., ch. 208, §§ 28, 28A and 31.

149 (b) After an arbitrator is selected:

150 (1) the arbitrator may make temporary awards under M.G.L. ch. 207, 208, 209 and
151 209C; and

152 (2) if the matter is urgent and the arbitrator is not able to act in a timely manner or
153 provide an adequate remedy, on motion of a party, the court may enter temporary orders.

154 (c) On motion of a party, before the court confirms a final award, the court under
155 Section 16, 18, or 19 may confirm, correct, vacate, or amend a temporary award made under
156 subsection (b)(1).

157 (d) On motion of a party, the court may enforce a subpoena or interim award issued
158 by an arbitrator for the fair and expeditious disposition of the arbitration.

159 SECTION 12. PROTECTION OF PARTY OR CHILD.

160 (a) In this section, “protection order” means an injunction or other order, issued under
161 the domestic-violence, family-violence, or stalking laws of the issuing jurisdiction, to prevent an
162 individual from engaging in a violent or threatening act against, harassment of, contact or
163 communication with, or being in physical proximity to another individual who is a party or a
164 child under the custodial responsibility of a party.

165 (b) If a party is subject to a protection order that does not permit attendance at
166 arbitration or if an arbitrator determines there is a reasonable basis to believe a party’s safety or

167 ability to participate effectively in arbitration is at risk, the arbitrator shall stay the arbitration and
168 refer the parties to court. The arbitration may not proceed unless the party at risk affirms the
169 arbitration agreement in a record and the court determines:

170 (1) the affirmation is informed and voluntary;

171 (2) arbitration is not inconsistent with the protection order; and

172 (3) reasonable procedures are in place to protect the party from risk of harm,
173 harassment, or intimidation.

174 (c) If an arbitrator determines that there is a reasonable basis to believe a child who is
175 the subject of a child-related dispute is subject to ongoing abuse or neglected, the arbitrator may
176 terminate the arbitration of the child-related dispute and shall have the right to report the
177 reasonably believed abuse or neglect to the Department of Children and Families,
178 notwithstanding the agreement to arbitrate.

179 (d) If a party is subject to a protection order that does not permit attendance at
180 arbitration or that party reasonably believes that his or her safety or ability to participate
181 effectively in arbitration is at risk, the party may move the court to stay the arbitration and
182 review temporary or interim awards under this section.

183 (e) This section supplements remedies available under law of this commonwealth for
184 the protection of victims of domestic violence, family violence, stalking, harassment, or similar
185 abuse.

186 SECTION 13. POWERS AND DUTIES OF ARBITRATOR.

187 (a) An arbitrator shall conduct an arbitration in a manner the arbitrator considers
188 appropriate for a fair and expeditious disposition of the dispute and consistent with the
189 agreement to arbitrate.

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

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

194 (1) select the rules for conducting the arbitration;

195 (2) hold conferences with the parties before a hearing;

196 (3) determine the date, time, and place of a hearing;

197 (4) require a party to provide:

198 (A) a copy of a relevant court order;

199 (B) information required to be disclosed in a family law proceeding under law and
200 procedural rules of this commonwealth and

201 (C) a proposed award that addresses each issue in arbitration;

202 (5) administer an oath or affirmation and issue a subpoena for the attendance of a
203 witness or the production of documents and other evidence at a hearing;

204 (6) compel discovery concerning the family law dispute and determine the date, time,
205 and place of discovery;

- 206 (7) determine the admissibility and weight of evidence;
- 207 (8) permit deposition of a witness for use as evidence at a hearing;
- 208 (9) impose a procedure to protect a party or child from risk of harm, harassment, or
209 intimidation;
- 210 (10) allocate arbitration fees, attorney's fees, expert-witness fees, and other costs to the
211 parties; and
- 212 (11) impose a sanction on a party for bad faith or misconduct during the arbitration
213 according to law and procedural rules governing imposition of a sanction for litigant misconduct
214 in a court proceeding.
- 215 (d) An arbitrator may not allow ex parte communication except to the extent allowed
216 in the agreement to arbitrate.

217 SECTION 14. RECORDING OF HEARING.

- 218 (a) Except as otherwise provided in subsection (b) or required by law of this
219 commonwealth, an arbitration hearing need not be recorded unless provided by the arbitration
220 agreement, or requested by a party.
- 221 (b) An arbitrator shall request a verbatim recording be made of any part of an
222 arbitration hearing concerning a child-related dispute.

223 SECTION 15. AWARD.

- 224 (a) An arbitrator shall make an award in a record, dated and signed by the arbitrator.
225 The arbitrator shall give notice of the award to each party by a method agreed on by the parties

226 or, if the parties have not agreed on a method, under the law and procedural rules of this
227 commonwealth governing notice in contractual arbitration.

228 (b) Except as otherwise provided in subsection (c), the award must state the reasons
229 on which it is based unless otherwise agreed by the parties.

230 (c) An award determining a child-related dispute must state the reasons on which it is
231 based.

232 (d) An award under this act is not enforceable as a judgment until confirmed under
233 Section 16.

234 SECTION 16. CONFIRMATION OF AWARD.

235 (a) After an arbitrator gives notice under Section 15(a) of an award, including an
236 award corrected under Section 17, a party may move the court for an order confirming the award.

237 (b) Except as otherwise provided in subsection (c), the court shall confirm an award
238 under this [act] if:

239 (1) the parties agree in a record to confirmation; or

240 (2) the time has expired for making a motion, and no motion is pending, under
241 Section 18 or 19.

242 (c) If an award determines a child-related dispute, the court shall confirm the award
243 under subsection (b) if the court finds, after a review of the record if necessary, that the award on
244 its face: complies with Section 15 and law of this state other than this [act] governing a child-
245 related dispute; and

246 (1) is in the best interests of the child.

247 (d) On confirmation, an award under this act is enforceable as a judgment.

248 SECTION 17. CORRECTION OR CLARIFICATION BY ARBITRATOR OF
249 UNCONFIRMED AWARD.

250 (a) On motion of a party made not later than 30 days after an arbitrator gives notice
251 under Section 15(a) of an award, the arbitrator may correct the award:

252 (1) if the award has an evident mathematical miscalculation or an evident mistake in
253 the description of a person, thing, or property;

254 (2) if the award is imperfect in a matter of form not affecting the merits on the issues
255 submitted; or

256 (3) to clarify the award.

257 SECTION 18. CORRECTION OR CLARIFICATION BY COURT OF
258 UNCONFIRMED AWARD.

259 (a) On motion of a party made not later than 90 days after an arbitrator gives notice
260 under Section 15(a) of an award, including an award corrected under Section 17, the court shall
261 correct the award if:

262 (1) the award has an evident mathematical miscalculation or an evident mistake in the
263 description of a person, thing, or property;

264 (2) the award is imperfect in a matter of form not affecting the merits of the issues
265 submitted; or

266 (3) the arbitrator made an award on a dispute not submitted to the arbitrator and the
267 award may be corrected without affecting the merits of the remaining issues submitted.

268 (b) A motion under this section to correct an award may be joined with a motion to
269 vacate or amend the award under Section 19.

270 (c) Unless a motion under Section 19 is pending, the court may confirm a corrected
271 award under Section 16.

272 SECTION 19. VACATION OR AMENDMENT BY COURT OF UNCONFIRMED
273 AWARD.

274 (a) On motion of a party, the court shall vacate an unconfirmed award if the moving
275 party establishes that:

276 (1) the award was procured by corruption, fraud, or other undue means;

277 (2) there was:

278 (A) evident partiality by the arbitrator; or

279 (B) corruption by the arbitrator; or

280 (C) misconduct by the arbitrator substantially prejudicing the rights of a party; or

281 (3) the arbitrator refused to postpone a hearing on showing of sufficient cause for
282 postponement, refused to consider evidence material to the controversy, or otherwise conducted
283 the hearing contrary to Section 13, so as to prejudice substantially the rights of a party; or

284 (4) the arbitrator exceeded the arbitrator's powers; or

285 (5) no arbitration agreement exists, unless the moving party participated in the
286 arbitration without making a motion under Section 7 not later than the beginning of the first
287 arbitration hearing; or

288 (6) the arbitration was conducted without proper notice under Section 6 of the
289 initiation of arbitration, so as to prejudice substantially the rights of a party; or

290 (7) a ground exists for vacating the award under law of this commonwealth; or

291 (8) the parties have included in the agreement the right to a review by the court of the
292 unconfirmed award for fairness and reasonableness in the same manner as the court would
293 review a settlement agreement of the parties in a family law matter for the purpose of
294 incorporation or incorporation and merger in a judgment, and the court finds that the award is not
295 fair and reasonable.

296 (b) Except as otherwise provided in subsection (c), on motion of a party, the court
297 shall vacate an unconfirmed award that determines a child-related dispute if the moving party
298 establishes that:

299 (1) the award does not comply with Section 15 or law of commonwealth governing a
300 child-related dispute or is contrary to the best interests of the child;

301 (2) the record of the hearing or the statement of reasons in the award is inadequate for
302 the court to review the award; or

303 (3) a ground for vacating the award under subsection (a) exists.

304 (c) If an award is subject to vacation under subsection (b)(1), on motion of a party,
305 the court may amend the award if amending rather than vacating is in the best interests of the
306 child.

307 (d) The court shall determine a motion under subsection (b) or (c) based on the record
308 of the arbitration hearing.

309 (e) A motion under this section to vacate or amend an award must be filed not later
310 than 30 days:

311 (1) after an arbitrator gives the party filing the motion notice of the award or a
312 corrected award; or

313 (2) for a motion under subsection (a)(1), after the ground of corruption, fraud, or
314 other undue means is known or by the exercise of reasonable care should have been known to the
315 party filing the motion.

316 (f) If the court under this section vacates an award for a reason other than the absence
317 of an enforceable arbitration agreement, the court may order a rehearing before an arbitrator. If
318 the reason for vacating the award is that the award was procured by corruption, fraud, or other
319 undue means or there was evident partiality, corruption, or misconduct by the arbitrator, the
320 rehearing must be before another arbitrator.

321 (g) If the court under this section denies a motion to vacate or amend an award, the
322 court
323 may confirm the award under Section 16 unless a motion is pending under Section 18.

324 SECTION 20. CLARIFICATION OF CONFIRMED AWARD.

325 (a) If the meaning or effect of an award confirmed under Section 16 is in dispute, the
326 parties may:

327 (1) agree to arbitrate the dispute before the original arbitrator or another arbitrator; or

328 (2) proceed in court under law of this commonwealth governing clarification of
329 a judgment in a family law proceeding.

330 SECTION 21. JUDGMENT ON AWARD.

331 (a) On granting an order confirming, vacating without directing a rehearing, or
332 amending an award under this act, the court shall enter judgment in conformity with the order.

333 (b) On motion of a party, the court may order that a document or part of the
334 arbitration record be sealed or redacted to prevent public disclosure of all or part of the record or
335 award to the extent permitted under law of this commonwealth.

336 SECTION 22. MODIFICATION OF JUDGMENT BASED ON AWARD.

337 (a) If a party requests under law of this commonwealth a modification of judgment
338 on an award based on a material change of circumstances after confirmation:

339 (1) the parties shall proceed under the dispute-resolution method specified in the
340 judgment; or

341 (2) if the award or judgment does not specify a dispute-resolution method, the parties
342 may:

343 (A) agree to arbitrate the modification before the original arbitrator or another
344 arbitrator; or

345 (B) absent agreement proceed under law of this commonwealth governing
346 modification of a judgment in a family law proceeding.

347 SECTION 23. ENFORCEMENT OF CONFIRMED AWARD.

348 (a) The court shall enforce an award confirmed under Section 16, including a
349 temporary award, in the manner and to the same extent as any other order or judgment of a court.

350 (b) The court shall enforce an arbitration award in a family law dispute confirmed by
351 a court in another state in the manner and to the same extent as any other order or judgment from
352 another state.

353 SECTION 24. APPEAL.

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

355 (1) an order granting or denying a motion to compel arbitration;

356 (2) an order granting or denying a motion to stay arbitration;

357 (3) an order confirming or denying confirmation of an award;

358 (4) an order correcting an award;

359 (5) an order vacating an award without directing a rehearing; or

360 (6) a final judgment.

361 (b) An appeal under this section may be taken as from an order or a judgment in a
362 civil action.

363 SECTION 25. IMMUNITY OF ARBITRATOR.

364 (a) An arbitrator or arbitration organization acting in that capacity in a family law
365 dispute is immune from civil liability to the same extent as a judge of a court of this
366 commonwealth acting in a judicial capacity.

367 (b) The immunity provided by this section supplements any immunity under law of
368 this commonwealth.

369 (c) An arbitrator's failure to make a disclosure required by Section 9 does not cause
370 the arbitrator to lose immunity under this section.

371 (d) An arbitrator is not competent to testify, and may not be required to produce
372 records, in a judicial, administrative, or similar proceeding about a statement, conduct, decision,
373 or ruling occurring during an arbitration, to the same extent as a judge of a court of this state
374 acting in a judicial capacity. This subsection does not apply:

375 (1) to the extent disclosure is necessary to determine a claim by the arbitrator or
376 arbitration organization against a party to the arbitration; or

377 (2) to a hearing on a motion under Section 19(a)(1) or (2) to vacate an award, if there
378 is prima facie evidence that a ground for vacating the award exists.

379 (e) If a person commences a civil action against an arbitrator arising from the
380 services of the arbitrator or seeks to compel the arbitrator to testify or produce records in
381 violation of subsection (d) and the court determines that the arbitrator is immune from civil

382 liability or is not competent to testify or required to produce the records, the court shall award the
383 arbitrator reasonable attorney's fees, costs, and reasonable expenses of litigation.

384 SECTION 26. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
385 NATIONAL COMMERCE ACT.

386 This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National
387 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section
388 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the
389 notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

390 SECTION 27. TRANSITIONAL PROVISION.

391 This [act] applies to arbitration of a family law dispute under an arbitration agreement
392 made on or after [the effective date of this [act]]. If an arbitration agreement was made before
393 [the effective date of this [act]], the parties may agree in a record that this [act] applies to the
394 arbitration.

395 SECTION 28. EFFECTIVE DATE.

396 This [act] takes effect upon passage of the bill.