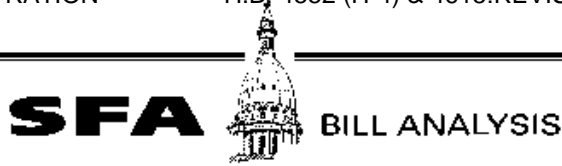


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House Bill 4552 (Substitute H-4 as passed by the House)  
House Bill 4615 (Substitute H-4 as passed by the House)  
Sponsor: Representative Michael Switalski (House Bill 4552)  
Representative Marc Shulman (House Bill 4615)  
House Committee: Family and Civil Law  
Senate Committee: Families, Mental Health and Human Services

Date Completed: 11-29-00

## **CONTENT**

**The bills would add Chapter 50B to the Revised Judicature Act to govern arbitration in domestic relations matters. The bills would do the following:**

- Allow the parties to a domestic relations matter to stipulate to binding arbitration by a signed agreement.
- Require a court to give the parties information about domestic relations arbitration, before accepting their agreement.
- Exclude cases involving domestic violence from arbitration, unless the parties waived this exclusion.
- Exclude a child abuse or neglect matter from arbitration.
- Provide that arbitration could be heard by one arbitrator or a panel of three, and prescribe arbitrator qualifications.
- Require the disclosure of any circumstance that could affect an arbitrator's impartiality.
- Specify the powers and duties of an arbitrator, including the authority to order discovery and the production of information.
- Allow an arbitrator to order the parties to file an affidavit of employment, income, assets, and liabilities.
- Require an arbitrator to order the parties to produce financial information.
- Establish deadlines for an arbitration award to be issued and for various motions or decisions.
- Require a court to enforce an award, and specify the grounds for vacating an award.
- Require an appeal of an award to be in the same manner as the appeal of other civil judgments.

The bills are tie-barred to each other.

### **House Bill 4552 (H-4)**

## **Scope**

Chapter 50B would provide for and govern arbitration in domestic relations matters. Arbitration proceedings also would be governed by court rule except to the extent those provisions were modified by an arbitration agreement or Chapter 50B. The new chapter would control if there were a conflict between it and Chapter 50 (Arbitrations).

## **Arbitration Agreement; Exclusion**

Parties to an action for divorce, annulment, separate maintenance, or child support, custody, or parenting time, or to a postjudgment proceeding related to such an action, 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 law and court rule as provided in the Act); parenting time; spousal support; costs, expenses, and attorney fees; enforceability of prenuptial and postnuptial agreements; allocation of the parties' responsibility for debt as between them; and/or other contested domestic relations matters. The court could not order a party to participate in arbitration except to the extent he or she had agreed to participate under a written arbitration agreement. Before accepting such an agreement under Chapter 50B, the court would have to give each party information about domestic relations arbitration. The State Court Administrative Office would have to prepare this information, which would have to include the following:

- A statement that arbitration would be binding.
- A statement that arbitration may or may not be appropriate in the party's case.
- A statement that the party could consult with an attorney before entering into the arbitration process or choose to be represented by an attorney throughout the process.

- Information about where and how to obtain legal services if the party could not afford an attorney.

If either party were subject to a personal protection order involving domestic violence or if, in the pending domestic relations matter, there were allegations of domestic violence or child abuse, the court could not refer the case to arbitration unless each party waived this exclusion. A party could not waive the exclusion unless he or she were represented by an attorney throughout the action, including the arbitration process, and were informed on the record about the arbitration process, the suspension of the formal rules of evidence, and the binding nature of arbitration.

If a party decided to waive the exclusion from arbitration after receiving this information, the court and the party's attorney would have to ensure that the waiver was informed and voluntary. If the court found that a party's waiver was informed and voluntary, the court would have to place those findings and the waiver on the record.

A child abuse or neglect matter would be specifically excluded from arbitration under the Act.

#### Appointment of Arbitrator; Responsibilities

Arbitration under Chapter 50B could be heard by a single arbitrator or by a panel of three arbitrators. The court would have to appoint an arbitrator agreed to the parties if he or she were qualified (as described below) and consented to the appointment. An appointed arbitrator would be immune from liability in regard to the arbitration proceeding to the same extent as the circuit judge with jurisdiction of the action.

The court could not appoint an arbitrator unless he or she met all of the following:

- Was an attorney in good standing with the State Bar of Michigan.
- Had practiced as an attorney for at least five years before the appointment and demonstrated an expertise in the area of domestic relations law.
- Had received training in the dynamics of domestic violence and in handling domestic relations matters that had a history of domestic violence.

The Office of the Friend of the Court would have to make available a list of arbitrators meeting these criteria, with a summary of each person's qualifications and experience.

An appointed arbitrator would have to hear and make an award on each issue submitted for arbitration under the arbitration agreement subject to its provisions. The arbitrator would have power and

duty to do all of the following:

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

#### Affidavit of Income & Assets

If the arbitrator considered it relevant to an issue, he or she could order the filing of an affidavit that identified a party's place of employment and other sources of income, and that listed the parties' assets and liabilities. The arbitrator could not release the affidavits until after both parties had filed them. He or she would have to attempt to release them 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, including cash value and amount payable at death; loans held as a creditor or money owed to the parties in any 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; ownership interests in businesses; limited partnerships; other assets in any form.

The affidavit also would have to list secured and unsecured credits; taxes; rents and security deposits; and all other liabilities in any form.

#### Impartiality

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

The court could have to hear the motion within 21 days after it was filed. If the court found that the arbitrator was disqualified, it could appoint another

arbitrator agreed to by the parties or could void the arbitration agreement and proceed as if arbitration had not been ordered.

#### **House Bill 4615 (H-4)**

##### **Production of Information**

As soon as practicable after the appointment of an arbitrator, the parties and attorneys would have to meet with him or her to consider all of the following:

- Scope of the issues submitted.
- Date, time, and place of the hearing.
- Witnesses, including experts, who could testify.
- Schedule for exchange of expert reports or summary of expert testimony.
- Disclosure of a circumstance that could affect the arbitrator's impartiality.

The parties, attorneys, and arbitrator also would have to consider exhibits, documents, or other information each party considered applicable and material to the case and a schedule for production or exchange of the information. If a party knew or reasonably should have known about the existence of information he or she was required to produce, that party would waive objection to producing the information if he or she did not object before the hearing.

The arbitrator would have to order each party to produce information that was applicable and material to an issue under arbitration, including any of the following:

- A current, complete, and accurate sworn financial disclosure statement.
- Financial disclosure statements for the past three years.
- State and Federal income tax returns for the previous three years or other time period as ordered by the arbitrator.
- Proposed award for each issue subject to arbitration.

Also, if a court had issued an order concerning an issue subject to arbitration, the parties would have to produce a copy of the order, State and Federal income tax returns for the year it was issued, and a financial statement for the time at which the order was issued, including at least gross and net income and assets and liabilities.

##### **Record of Hearing**

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

parties could provide in their agreement that a record be made of those portions of a hearing related to one or more issues subject to arbitration.

A record would have to be made of that 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.

##### **Written Award**

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

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 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 such a deviation prescribed for the court under the law applicable to the domestic relations dispute being arbitrated.

The arbitrator would retain jurisdiction to correct errors or omissions in an award until the court confirmed the award. Within 14 days after the award was issued, a party to the arbitration could file a motion to correct errors or omissions. The other party could respond to the motion within 14 days. The arbitrator would have to issue a decision on the motion within 14 days after receiving a response or, if a response were not filed, 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 Chapter 50B in the same manner as an order issued by the court. A party could make a motion to the court to enforce an award or order.

The plaintiff in an action that was submitted to arbitration would have to file with the 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, another party could file a judgment, order, or motion to settle the judgment and could request sanctions.

### Vacation or Modification of Award

The circuit 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 child's best interests, or as described below. 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 that applied to child support amounts.

If a party applied to the court for vacation or modification of an arbitrator's award, the court would have to review the award. 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 evident 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.

An application to vacate an award on the grounds that it was procured by corruption, fraud, or other 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 on the grounds that the arbitrator exceeded his or her powers, the court could order a rehearing before the arbitrator who made the award.

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

Other standards and procedures regarding review of arbitration awards would be governed by court rule.

### Appeal

An appeal from an arbitration award 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 600.5070-600.5075  
(H.B. 4552)  
Proposed MCL 600.5076-600.5082  
(H.B. 4615)

Legislative Analyst: S. Lowe

### **FISCAL IMPACT**

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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.

There are no statewide data on the current use of arbitrators in domestic relations matters. Reduced court costs would depend on whether the bills increased the use of arbitration in domestic relations matters.

Fiscal Analyst: B. Bowerman