



January 30, 2004

HOUSE BILL No. 1163

DIGEST OF HB 1163 (Updated January 28, 2004 12:43 pm - DI 107)

Citations Affected: IC 31-11; IC 34-6; IC 34-57.

Synopsis: Arbitration in family law. Requires arbitration in family law arbitration cases to be irrevocable. Provides the procedures for family law arbitration cases.

Effective: July 1, 2004.

Summers

January 13, 2004, read first time and referred to Committee on Judiciary.
January 29, 2004, amended, reported — Do Pass.

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HB 1163—LS 6475/DI 107+



January 30, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

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HOUSE BILL No. 1163



A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 31-11-3-5 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) Parties to a
- 3 premarital agreement may contract with each other regarding the
- 4 following matters:
- 5 (1) The rights and obligations of each of the parties in any
- 6 property of either or both of them whenever and wherever
- 7 acquired or located.
- 8 (2) The right to:
- 9 (A) buy;
- 10 (B) sell;
- 11 (C) use;
- 12 (D) exchange;
- 13 (E) abandon;
- 14 (F) lease;
- 15 (G) consume;
- 16 (H) expend;
- 17 (I) assign;

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- 1 (J) create a security interest in;
- 2 (K) mortgage;
- 3 (L) encumber;
- 4 (M) dispose of; or
- 5 (N) otherwise manage and control;
- 6 property.
- 7 (3) The disposition of property upon:
- 8 (A) legal separation;
- 9 (B) dissolution of marriage;
- 10 (C) death; or
- 11 (D) the occurrence or nonoccurrence of any other event.
- 12 (4) The modification or elimination of spousal maintenance.
- 13 (5) The making of:
- 14 (A) a will;
- 15 (B) a trust; or
- 16 (C) other arrangement;
- 17 to carry out the provisions of the agreement.
- 18 (6) The ownership rights in and disposition of a death benefit
- 19 from a life insurance policy.
- 20 (7) The choice of law governing the construction of the
- 21 agreement.
- 22 (8) Any other matter not in violation of public policy or a statute
- 23 imposing a criminal penalty, including the personal rights and
- 24 obligations of the parties.
- 25 **(9) The agreement of the parties to submit to family law**
- 26 **arbitration under IC 34-57-5 for an action:**
- 27 **(A) for the dissolution of a marriage; and**
- 28 **(B) to establish:**
- 29 **(i) child support;**
- 30 **(ii) custody; or**
- 31 **(iii) parenting time.**
- 32 (b) A premarital agreement may not adversely affect the right of a
- 33 child to support.
- 34 SECTION 2. IC 34-6-2-44.7 IS ADDED TO THE INDIANA CODE
- 35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 36 1, 2004]: **Sec. 44.7. "Family law arbitrator", for purposes of**
- 37 **IC 34-57-5, means:**
- 38 **(1) an attorney certified as a family law specialist in Indiana**
- 39 **by an independent certifying organization that is approved**
- 40 **and monitored under Rule 30 of the Rules for Admission to**
- 41 **the Bar;**
- 42 **(2) a private judge qualified under Rule 1.3 of the Indiana**

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1 **Supreme Court Rules for Alternative Dispute Resolution; or**
2 **(3) an individual who is a former magistrate or commissioner**
3 **of an Indiana court of record.**
4 SECTION 3. IC 34-57-5 IS ADDED TO THE INDIANA CODE AS
5 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2004]:
7 **Chapter 5. Family Law Arbitration**
8 **Sec. 1. (a) In an action:**
9 **(1) for the dissolution of a marriage;**
10 **(2) to establish:**
11 **(A) child support;**
12 **(B) custody; or**
13 **(C) parenting time; or**
14 **(3) to modify:**
15 **(A) a decree;**
16 **(B) a judgment; or**
17 **(C) an order;**
18 **entered under IC 31;**
19 **both parties may agree in writing to submit to arbitration by a**
20 **family law arbitrator.**
21 **(b) If parties file an agreement to submit to arbitration with a**
22 **court, the parties shall:**
23 **(1) identify an individual to serve as a family law arbitrator;**
24 **or**
25 **(2) indicate to the court that they have not selected an**
26 **arbitrator.**
27 **(c) Each court shall maintain a list of attorneys who are:**
28 **(1) qualified; and**
29 **(2) willing to be appointed by the court;**
30 **to serve as a family law arbitrator.**
31 **(d) If the parties indicate that they have not selected an**
32 **arbitrator under subsection (b)(2), the court shall designate three**
33 **(3) potential arbitrators from the court's list of attorneys under**
34 **subsection (c). The party initiating the action shall strike one (1)**
35 **potential arbitrator, the other party shall strike one (1) potential**
36 **arbitrator, and the remaining potential arbitrator is the family law**
37 **arbitrator for the parties.**
38 **(e) In a dissolution of marriage case, the written agreement to**
39 **submit to arbitration must state that both parties confer**
40 **jurisdiction upon the family law arbitrator to dissolve the marriage**
41 **and to determine:**
42 **(1) child support, if there is a child of both parties to the**

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- 1 marriage;
- 2 (2) custody, if there is a child of both parties to the marriage;
- 3 (3) parenting time, if there is a child of both parties to the
- 4 marriage; or
- 5 (4) any other matter over which a trial court would have
- 6 jurisdiction concerning family law.

7 **Sec. 2. Unless both parties agree in writing to repudiate the**
 8 **agreement, an agreement to submit to arbitration by a family law**
 9 **arbitrator under this chapter is:**

- 10 (1) valid;
- 11 (2) irrevocable; and
- 12 (3) enforceable;
- 13 until the award is entered in the matter in which arbitration has
- 14 taken place.

15 **Sec. 3. For arbitration to take place under this chapter, at least**
 16 **one (1) of the parties must have been:**

- 17 (1) a resident of Indiana; or
- 18 (2) stationed at a United States military installation within
- 19 Indiana;
- 20 for at least six (6) months immediately preceding the filing of the
- 21 petition or action.

22 **Sec. 4. A family law arbitrator shall comply with the:**

- 23 (1) child support; and
- 24 (2) parenting time;
- 25 guidelines adopted by the supreme court in family law arbitration
- 26 if there is a child of both parties to the marriage.

27 **Sec. 5. (a) A record of the proceeding in family law arbitration**
 28 **may be requested by either party if written notice is given to the**
 29 **family law arbitrator within fifteen (15) days after the family law**
 30 **arbitrator has been selected.**

31 **(b) Written notice under subsection (a) must specify the**
 32 **requested manner of recording and preserving the transcript.**

33 **(c) The family law arbitrator may select a person to record any**
 34 **proceedings and to administer oaths.**

35 **Sec. 6. (a) Except as provided in subsection (b), at the conclusion**
 36 **of a family law arbitration case, the family law arbitrator shall**
 37 **make written findings of fact and conclusions of law not later than**
 38 **thirty (30) days after the hearing.**

39 **(b) If the parties consent, the period for the family law**
 40 **arbitrator to make written findings of fact and conclusions of law**
 41 **may be extended to ninety (90) days after the hearing.**

42 **(c) The family law arbitrator shall send a copy of the written**

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findings of fact and conclusions of law to:

- (1) all parties participating in the arbitration; and**
- (2) the court.**

(d) After the court has received a copy of the findings of fact and conclusions of law, the court shall enter:

- (1) judgment; and**
- (2) an order for an entry on the docket regarding the judgment.**

Sec. 7. In a dissolution of marriage case, the family law arbitrator shall:

(1) divide the property of the parties, regardless of whether the property was:

- (A) owned by either spouse before the marriage;**
- (B) acquired by either spouse in his or her own right:

 - (i) after the marriage; and**
 - (ii) before final separation of the parties; or****
- (C) acquired by their joint efforts; and**

(2) divide the property in a just and reasonable manner by:

- (A) division of the property in kind;**
- (B) setting the property or parts of the property over to one (1) of the spouses and requiring either spouse to pay an amount, either in gross or in installments, that is just and proper;**
- (C) ordering the sale of the property under the conditions the family law arbitrator prescribes and dividing the proceeds of the sale; or**
- (D) ordering the distribution of benefits described in IC 31-9-2-98(b)(2) or IC 31-9-2-98(b)(3) that are payable after the dissolution of marriage, by setting aside to either of the parties a percentage of those payments either by assignment or in kind at the time of receipt.**

Sec. 8. In a dissolution of marriage case, at least sixty (60) days after the petition or action is filed, the family law arbitrator may enter a summary dissolution decree without holding a hearing if verified pleadings have been filed with the family law arbitrator, signed by both parties, containing:

- (1) a written waiver of hearing; and**
- (2) either:

 - (A) a statement that there are no contested issues in the action; or**
 - (B) a written agreement made in accordance with IC 31-15-2-7 that settles any contested issues between the****

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parties.

Sec. 9. A family law arbitrator may modify an award after making written findings of fact and conclusions of law if:

- (1) a party makes a fraudulent misrepresentation during the arbitration;**
- (2) the family law arbitrator is ordered to modify the award on remand; or**
- (3) the parties consent to the modification.**

Sec. 10. An appeal may be taken at the conclusion of a family law arbitration following the entry of judgment in the case as judgments in a civil action.

Sec. 11. (a) Except as provided in subsection (b), fees for the family law arbitrator shall be shared equally by both parties unless otherwise agreed in writing.

(b) The family law arbitrator may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for attorney's fees, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

(c) Fees for the family law arbitrator shall be paid not later than thirty (30) days after the arbitration judgment is filed with the court.

Sec. 12. The Indiana Supreme Court Rules for Alternative Dispute Resolution apply to family law arbitration in all matters not covered by this chapter.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1163, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 42, delete "support;" and insert "**support, if there is a child of both parties to the marriage;**".

Page 4, line 1, delete "custody;" and insert "**custody, if there is a child of both parties to the marriage;**".

Page 4, line 2, delete "time;" and insert "**time, if there is a child of both parties to the marriage;**".

Page 4, line 4, delete "law;" and insert "**law.**".

Page 4, delete line 5.

Page 4, line 19, delete "start of the" and insert "**filing of the petition or action.**".

Page 4, delete line 20.

Page 5, line 6, after "(2)" insert "**an order for**".

Page 5, line 31, delete "arbitration under this chapter begins," and insert "**the petition or action is filed,**".

Page 6, line 8, after "arbitration" insert "**following the entry of judgment in the**".

Page 6, delete lines 21 through 22.

Page 6, line 23, delete "13." and insert "**12.**".

and when so amended that said bill do pass.

(Reference is to HB 1163 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 12, nays 0.

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