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SENATE BILL 258

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO DOMESTIC AFFAIRS; PROVIDING FOR A BINDING  
ARBITRATION OPTION DURING A DISSOLUTION OF MARRIAGE  
PROCEEDING; ENACTING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 40, Article 4 NMSA  
1978 is enacted to read:

" [NEW MATERIAL] BINDING ARBITRATION OPTION--PROCEDURE. --

A. Parties to an action for divorce, separation,  
custody or time-sharing, child support, spousal support,  
marital property and debt division or attorney fees related to  
such matters, including any post-judgment proceeding, may  
stipulate to binding arbitration by a signed agreement that  
provides for an award with respect to one or more of the  
following issues:

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- 1 (1) valuation and division of real and
- 2 personal property;
- 3 (2) child support, custody, time-sharing or
- 4 visitation;
- 5 (3) spousal support;
- 6 (4) costs, expenses and attorney fees;
- 7 (5) enforceability of prenuptial and
- 8 post-nuptial agreements;
- 9 (6) determination and allocation of
- 10 responsibility for debt as between the parties;
- 11 (7) any civil tort claims related to any of
- 12 the foregoing; or
- 13 (8) other contested domestic relations
- 14 matters.

15 B. A court may not order a party to participate in

16 arbitration except to the extent a party has agreed to

17 participate pursuant to a written arbitration agreement.

18 C. Arbitration pursuant to this section shall be

19 heard by one arbitrator. The court shall appoint an

20 arbitrator agreed to by the parties if the arbitrator consents

21 to the appointment.

22 D. If the parties have not agreed to an

23 arbitrator, the court shall appoint an arbitrator who:

- 24 (1) is an attorney in good standing with the
- 25 state bar of New Mexico; and

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1 (2) has practiced as an attorney for not less  
2 than five years immediately preceding the appointment and  
3 actively practiced in the area of domestic relations during  
4 three of those five years. Any period of time during which a  
5 person serves as a judge, special master or child support  
6 hearing officer is considered as actively practicing in the  
7 area of domestic relations; or

8 (3) is another professional licensed and  
9 experienced in the subject matter that is the area of the  
10 dispute.

11 E. An arbitrator appointed pursuant to this  
12 section is immune from liability in regard to the arbitration  
13 proceeding to the same extent as the judge who has  
14 jurisdiction of the action that is submitted to arbitration.

15 F. Objections to the qualifications of an  
16 arbitrator must be raised in connection with the appointment  
17 by the court or they are waived. The court will permit  
18 parties to raise objections based on qualifications within ten  
19 days of appointment of an arbitrator. Parties who agree on an  
20 arbitrator waive objections to his qualifications.

21 G. An arbitrator appointed pursuant to this  
22 section:

23 (1) shall hear and make an award on each  
24 issue submitted for arbitration pursuant to the arbitration  
25 agreement subject to the provisions of the agreement; and

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(2) has all of the following powers and duties:

- (a) to administer an oath or issue a subpoena as provided by court rule;
- (b) to issue orders regarding discovery proceedings relative to the issues being arbitrated, including appointment of experts; and
- (c) to allocate arbitration fees and expenses between the parties, including imposing a fee or expense on a party or attorney as a sanction for failure to provide information, subject to provisions of the arbitration agreement.

H. An arbitrator, attorney or party in an arbitration proceeding pursuant to this section shall disclose in writing any circumstances that may affect an arbitrator's impartiality, including, bias, financial interests, personal interests or family relationships. Upon disclosure of such a circumstance, a party may request disqualification of the arbitrator. If the arbitrator does not withdraw within seven days after a request for disqualification, the party may file a motion for disqualification with the court.

I. If the court finds that the arbitrator is disqualified, the court may appoint another arbitrator, subject to the provisions of the arbitration agreement.

J. As soon as practicable after the appointment of

1 the arbitrator, the parties and attorneys shall confer with  
2 the arbitrator to consider all of the following:

- 3 (1) scope of the issues submitted;
- 4 (2) date, time and place of the hearing;
- 5 (3) witnesses, including experts, who may  
6 testify;
- 7 (4) appointment of experts and a schedule for  
8 exchange of expert reports or summary of expert testimony; and
- 9 (5) subject to the provisions of Subsection K  
10 of this section, exhibits, documents or other information each  
11 party considers material to the case and a schedule for  
12 production or exchange of the information. An objection not  
13 made before the hearing to production or lack of production of  
14 information is waived.

15 K. The arbitrator shall order reasonable access to  
16 information for each party that is material to the arbitration  
17 issues prior to the hearing, including the following:

- 18 (1) a current complete sworn financial  
19 disclosure statement, when financial matters are at issue;
- 20 (2) if a court has issued an order concerning  
21 an issue subject to arbitration, a copy of the order;
- 22 (3) any relevant documents related to the  
23 arbitration issues defined by the arbitrator;
- 24 (4) proposed award by each party for each  
25 issue subject to arbitration; and

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1 (5) expert opinions of experts to be used by  
2 either party or appointed by the arbitrator.

3 L. Except as provided by this section, court rule  
4 or the arbitration agreement, a record shall not ordinarily be  
5 made of an arbitration hearing pursuant to this section unless  
6 either party requests it. If a record is not required, an  
7 arbitrator may make a record to be used only by the arbitrator  
8 to aid in reaching the decision.

9 M. Unless waived by the parties, a record shall be  
10 made of that portion of the hearing that concerns child  
11 custody, visitation or time-sharing.

12 N. The arbitration agreement may set forth any  
13 standards on which an award should be based, including the law  
14 to be applied. An arbitration agreement shall provide that in  
15 deciding child support issues, the arbitrator shall apply  
16 Section 40-4-11.1 NMSA 1978 when modifying a child support  
17 order.

18 O. Unless otherwise agreed to by the parties and  
19 arbitrator in writing or on the record, the arbitrator shall  
20 issue the written award on each issue within sixty days after  
21 the end of the hearing and after receipt of proposed findings  
22 of fact and conclusions of law if requested by the arbitrator.

23 P. If the parties reach an agreement regarding  
24 child custody, time-sharing or visitation, the agreement shall  
25 be placed on the record by the parties under oath and shall be

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1 included in the arbitrator's written award.

2 Q. The arbitrator retains jurisdiction to correct  
3 errors or omissions in an award upon motion by a party to the  
4 arbitrator within twenty days after the award is issued or  
5 upon the arbitrator's own motion. Another party to the  
6 arbitration may respond to the motion within seven days after  
7 the motion is made. The arbitrator shall make a decision on  
8 the motion within seven days after the expiration of the  
9 response time period.

10 R. The court shall enforce an arbitrator's award  
11 or other order issued pursuant to this section in the same  
12 manner as an order issued by the court. A party may make a  
13 motion to the court to enforce an arbitrator's award or order.

14 S. Any party in an action that was submitted to  
15 arbitration pursuant to this section shall file with the court  
16 a stipulated order, or a motion to enforce the award within  
17 twenty-one days after the arbitrator's award is issued unless  
18 otherwise agreed to by the parties in writing or unless the  
19 arbitrator or court grants an extension.

20 T. If a party applies to the court for vacation of  
21 an arbitrator's award in binding arbitration issued pursuant  
22 to this section that concerns child custody, time-sharing or  
23 visitation, the court shall review the award based only upon  
24 the record of the arbitration hearing and factual matters that  
25 have arisen since the arbitration hearing that are relevant to

1 the claim. The court may vacate an award of custody, time-  
2 sharing or visitation made in binding arbitration if the court  
3 finds that circumstances have changed since issuance of the  
4 award that are adverse to the best interests of the child,  
5 upon a finding that the award will cause harm or be  
6 detrimental to a child, or pursuant to Subsections U and V of  
7 this section. An arbitration agreement may provide a broader  
8 scope of review of custody, time-sharing or visitation issues  
9 by the court, and such review will apply if broader than this  
10 section.

11 U. If a party applies to the court for vacation or  
12 modification of an arbitrator's award issued pursuant to this  
13 section, the court shall review the award only as provided in  
14 Subsections T and V of this section.

15 V. If a party applies under this section, the  
16 court may vacate, modify or correct an award under any of the  
17 following circumstances:

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

20 (2) there was evident partiality by an  
21 arbitrator, or misconduct prejudicing a party's rights;

22 (3) the arbitrator exceeded his powers; or

23 (4) the arbitrator refused to postpone the  
24 hearing on a showing of sufficient cause or refused to hear  
25 evidence substantial and material to the controversy.



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W. An application to vacate an award on grounds stated in Subsections U and V of this section shall be decided by the court. If an award is vacated on grounds stated in Paragraph (3) or (4) of Subsection V of this section, the court may order a rehearing before the arbitrator who made the award.

X. An appeal from an arbitration award pursuant to this section that the court confirms, vacates, modifies or corrects shall be taken in this same manner as from an order or judgment in other domestic relations actions.

Y. No arbitrator may decide issues of a criminal nature or make decisions on petitions pursuant to the Family Violence Protection Act. "

1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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5  
6 February 3, 1999  
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8 Mr. President:  
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10 Your JUDICIARY COMMITTEE, to whom has been referred  
11

12 SENATE BILL 258  
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14 has had it under consideration and reports same with  
15 recommendation that it DO PASS.  
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18 Respectfully submitted,  
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24 Michael S. Sanchez, Chairman  
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Adopted \_\_\_\_\_ Not

1 Adopted \_\_\_\_\_

2 (Chief Clerk)

(Chief Clerk)

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6 Date \_\_\_\_\_

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9 The roll call vote was 4 For 1 Against

10 Yes: 4

11 No: Stockard

12 Excused: Aragon, Davis, Tsosie

13 Absent: None

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FORTY- FOURTH LEGISLATURE

FIRST SESSION

February 8, 1999

SENATE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE BILL 258

Amendment sponsored by Senator Cisco McSorley

1. On page 2, line 17, after the period insert the following sentence:

"When the party involved is a minor, then his parent must consent to arbitration. When the party involved is a minor with a guardian ad litem, the guardian ad litem must provide written consent. When the party involved is a minor without a parent or guardian ad litem, then in order for arbitration to proceed the court must find that arbitration is in the best interest of the minor. "

2. On page 2, line 19, after "one" insert "or more".

FORTY- FOURTH LEGISLATURE  
FIRST SESSION

SF1/SB 258

Page 13

3. On page 2, line 25 strike "and".

4. On page 6, line 16, before "modifying" insert "setting  
or".

5. On page 9, line 6 before the period insert the  
following:

"when both parties consent to the rehearing before the  
arbitrator who made the award".

Cisco McSorley

Adopted \_\_\_\_\_ Not Adopted

(Chief Clerk)

(Chief Clerk)

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

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Date \_\_\_\_\_

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1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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6 March 10, 1999  
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8 Mr. Speaker:  
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10 Your JUDICIARY COMMITTEE, to whom has been referred  
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12 SENATE BILL 258, as amended  
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14 has had it under consideration and reports same with  
15 recommendation that it DO PASS.

16 Respectfully submitted,  
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21 R. David Pederson, Chairman  
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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

HJC/SB 258

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 1 Against

Yes: 9

No: Godbey

Excused: Luna, Stewart

Absent: None

J: \99BillSWP\S0258

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