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SENATE BILL 1108

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

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 NMSA 1978 is  
enacted to read:

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

A. Parties to any 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 related to such  
action, may stipulate to binding arbitration by a signed  
agreement that provides for an award with respect to one or more  
of the following issues:

Underscored material = new  
[bracketed material] = delete

1 (1) valuation and division of real and personal  
2 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 the  
12 foregoing; or

13 (8) other contested domestic relations matters.

14 B. A court may not order a party to participate in  
15 arbitration except to the extent a party has agreed to  
16 participate under a written arbitration agreement.

17 C. Arbitration under this section may be heard by  
18 one or more arbitrators. The court shall appoint an arbitrator  
19 agreed to by the parties if the arbitrator consents to the  
20 appointment.

21 (1) If the parties have not agreed to an  
22 arbitrator, the court shall appoint an arbitrator who shall meet  
23 the following qualifications:

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

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

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

11 (2) 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 jurisdiction  
14 of the action that is submitted to arbitration.

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

21 D. An arbitrator appointed under this section:

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

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

1 (a) to administer an oath or issue a  
2 subpoena as provided by court rule;

3 (b) to issue orders regarding discovery  
4 proceedings relative to the issues being arbitrated, including  
5 among others, appointment of experts; and

6 (c) to allocate arbitration fees and  
7 expenses between the parties, including imposing a fee or  
8 expense on a party or attorney as a sanction for failure to  
9 provide information, subject to provisions of the arbitration  
10 agreement.

11 E. An arbitrator, attorney or party in an  
12 arbitration proceeding under this section shall disclose in  
13 writing any circumstances that may affect an arbitrator's  
14 impartiality, including, but not limited to, bias, financial  
15 interests, personal interests or family relationships. Upon  
16 disclosure of such a circumstance, a party may request  
17 disqualification of the arbitrator. If the arbitrator does not  
18 withdraw within seven days after a request for disqualification,  
19 the party may file a motion for disqualification with the court.

20 F. If the court finds that the arbitrator is  
21 disqualified, the court may appoint another arbitrator, subject  
22 to the provisions of the arbitration agreement.

23 G. As soon as practicable after the appointment of  
24 the arbitrator, the parties and attorneys shall confer with the  
25 arbitrator to consider all of the following:

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

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

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

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

7 J. Unless waived by the parties, a record shall be  
8 made of that portion of any hearing that concerns child custody,  
9 visitation or time-sharing.

10 K. The arbitration agreement may set forth any  
11 standards on which an award should be based, including any law  
12 to be applied.

13 L. Unless otherwise agreed by the parties and  
14 arbitrator in writing or on the record, the arbitrator shall  
15 issue the written award on each issue within sixty days after  
16 the end of the hearing and after receipt of proposed findings of  
17 fact and conclusions of law if requested by the arbitrator.

18 M. If the parties reach an agreement regarding child  
19 custody, time-sharing or visitation, the agreement shall be  
20 placed on the record by the parties under oath and shall be  
21 included in the arbitrator's written award.

22 N. The arbitrator retains jurisdiction to correct  
23 errors or omissions in an award upon motion by a party to the  
24 arbitrator within twenty days after the award is issued or upon  
25 the arbitrator's own motion. Another party to the arbitration

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1 may respond to the motion within seven days after the motion is  
2 made. The arbitrator shall make a decision on the motion within  
3 seven days after the expiration of the response time period.

4 0. The court shall enforce an arbitrator's award or  
5 other order issued under this section in the same manner as an  
6 order issued by the court. A party may make a motion to the  
7 court to enforce an arbitrator's award or order.

8 P. Any party in an action that was submitted to  
9 arbitration under this section shall file with the court a  
10 stipulated order, or a motion to enforce the award within  
11 twenty-one days after the arbitrator's award is issued unless  
12 otherwise agreed to by the parties in writing or unless the  
13 arbitrator or court grants an extension.

14 Q. If a party applies to the court for vacation of  
15 an arbitrator's award in binding arbitration issued under this  
16 section that concerns child custody, time-sharing or visitation,  
17 the court shall review the award based only upon any record of  
18 the arbitration hearing and any factual matters that have arisen  
19 since the arbitration hearing that are relevant to the claim.  
20 The court may vacate an award of custody, time-sharing or  
21 visitation made in binding arbitration if the court finds that  
22 circumstances have changed since issuance of the award that are  
23 adverse to the best interests of the child, upon a finding that  
24 the award will cause harm or be detrimental to a child, or  
25 pursuant to Subsections R and S of this section. An arbitration

1 agreement may provide a broader scope of review of custody,  
2 time-sharing or visitation issues by the court, and such review  
3 will apply if broader than this section.

4 R. If a party applies to the court for vacation or  
5 modification of an arbitrator's award issued under this section,  
6 the court shall review the award as provided in this section.

7 S. If a party applies under this section, the court  
8 may vacate, modify or correct an award under any of the  
9 following circumstances:

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

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

14 (3) the arbitrator exceeded his powers; or

15 (4) the arbitrator refused to postpone the  
16 hearing on a showing of sufficient cause or refused to hear  
17 evidence substantial and material to the controversy.

18 T. An application to vacate an award on grounds  
19 stated in Subsections R and S of this section shall be decided  
20 by the court. If an award is vacated in grounds stated in  
21 Paragraph (3) or (4) of Subsection S of this section, the court  
22 may order a rehearing before the arbitrator who made the award.

23 U. An appeal from an arbitration award under this  
24 section that the court confirms, vacates, modifies or corrects  
25 shall be taken in this same manner as from an order or judgment

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1 in other domestic relations actions."

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1 FORTY-THIRD LEGISLATURE

SB 1108/a

2 FIRST SESSION, 1997

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5  
6 March 5, 1997

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8 Mr. President:

9  
10 Your JUDICIARY COMMITTEE, to whom has been referred

11  
12 SENATE BILL 1108

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, amended as follows:

16  
17  
18 1. On page 3, line 15, strike "objection" and insert in lieu  
19 thereof "objections".

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21 2. On page 3, line 17, after "they" insert "are".

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23 Respectfully submitted,

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Fernando R. Macias, Chairman

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

Date \_\_\_\_\_

The roll call vote was 6 For 1 Against

Yes: 6

No: Sanchez

Excused: Tsosie

Absent: None

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

Page 12

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 20, 1997

SENATE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE BILL 1108, as  
amended

AMENDMENT sponsored by SENATOR MCSORLEY

1. On page 8, lines 6, after the word "award" insert the word  
"only".

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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\_\_\_\_\_  
Senator Cisco McSorley

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

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

S1108FS1

**State of New Mexico**  
**House of Representatives**

**FORTY-THIRD LEGISLATURE**  
**FIRST SESSION, 1997**

**March 20, 1997**

**Mr. Speaker:**

**Your JUDICIARY COMMITTEE, to whom has been referred**

**SENATE BILL 1108, as amended**

**has had it under consideration and reports same with  
recommendation that it DO PASS.**

**Respectfully submitted,**

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**Thomas P. Foy, Chairman**

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**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Alwin, Luna, Mallory, Rios, Sanchez, Stewart

Absent: None

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Underscored material = new  
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