

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:

"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:

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

B. A court may not order a party to participate in arbitration except to the extent a party has agreed to participate pursuant to a written arbitration agreement. 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 guardian ad litem, then in order for arbitration to proceed the court must find that arbitration is in the best interest of the minor.

C. Arbitration pursuant to this section shall be heard by one or more arbitrator. The court shall appoint an arbitrator agreed to by the parties if the arbitrator consents to the appointment.

D. If the parties have not agreed to an arbitrator, the court shall appoint an arbitrator who:

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

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

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

E. An arbitrator appointed pursuant to this section is immune from liability in regard to the

arbitration proceeding to the same extent as the judge who has jurisdiction of the action that is submitted to arbitration.

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

G. An arbitrator appointed pursuant to this section:

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

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

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

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

- (1) a current complete sworn financial

disclosure statement, when financial matters are at issue;

(2) if a court has issued an order concerning an issue subject to arbitration, a copy of the order;

(3) any relevant documents related to the arbitration issues defined by the arbitrator;

(4) proposed award by each party for each issue subject to arbitration; and

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

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

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

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

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

arbitrator.

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

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

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

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

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

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

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

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

- (1) the award was procured by corruption, fraud or other undue means;
- (2) there was evident partiality by an arbitrator, or misconduct prejudicing a party's rights;
- (3) the arbitrator exceeded his powers; or
- (4) the arbitrator refused to postpone the hearing on a showing of sufficient cause or refused to hear evidence substantial and material to the controversy.

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

