

SENATE BILL NO. 104

INTRODUCED BY J. WELBORN

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM FAMILY LAW ARBITRATION ACT; PROVIDING FOR THE ARBITRATION OF FAMILY LAW DISPUTES; PROVIDING REQUIREMENTS FOR ARBITRATION AGREEMENTS AND INITIATING ARBITRATION; PROVIDING FOR THE QUALIFICATION, SELECTION, AND DISQUALIFICATION OF ARBITRATORS; PROVIDING FOR PARTY PARTICIPATION AND PROTECTION OF CERTAIN PARTIES; PROVIDING FOR ARBITRATOR POWERS AND DUTIES; PROVIDING FOR ARBITRATION AWARDS AND THE CORRECTION, CONFIRMATION, AMENDMENT, OR VACATION OF AWARDS; PROVIDING FOR ENFORCEMENT OF AWARDS; PROVIDING FOR APPEALS; AND PROVIDING FOR ARBITRATORS' IMMUNITY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 28] may be cited as the Uniform Family Law Arbitration Act.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 28], the following definitions apply:

- (1) "Arbitration agreement" means an agreement that subjects a family law dispute to arbitration.
- (2) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration or is involved in the selection of an arbitrator.
- (3) "Arbitrator" means an individual selected, alone or with others, to make an award in a family law dispute that is subject to an arbitration agreement.
- (4) "Child-related dispute" means a family law dispute regarding the parenting or financial support of a child.
- (5) "Court" means the district court.
- (6) "Family law dispute" means a contested issue arising under Title 40.

1 (7) "Party" means an individual who signs an arbitration agreement and whose rights will be  
2 determined by an award.

3 (8) "Person" means an individual, estate, business or nonprofit entity, public corporation, government  
4 or governmental subdivision, agency, or instrumentality, or any other legal entity.

5 (9) "Record", used as a noun, means information that is inscribed on a tangible medium or that is  
6 stored in an electronic or other medium and is retrievable in perceivable form.

7 (10) "Sign" means, with present intent to authenticate or adopt a record:

8 (a) to execute or adopt a tangible symbol; or

9 (b) to attach to or logically associate with the record an electronic symbol, sound, or process.

10 (11) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United  
11 States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The  
12 term includes a federally recognized Indian tribe.

13

14 **NEW SECTION. Section 3. Scope.** (1) [Sections 1 through 28] govern arbitration of a family law  
15 dispute.

16 (2) [Sections 1 through 28] do not authorize an arbitrator to make an award that:

17 (a) grants a legal separation, dissolution of marriage, or invalidity of marriage;

18 (b) terminates parental rights;

19 (c) grants an adoption or a guardianship of a child or incapacitated individual; or

20 (d) issues an order of protection pursuant to Title 40, chapter 15.

21

22 **NEW SECTION. Section 4. Applicable law.** (1) Except as otherwise provided in [sections 1 through  
23 28], the law applicable to arbitration is Title 27, chapter 5.

24 (2) In determining the merits of a family law dispute, an arbitrator shall apply the law of this state,  
25 including its choice of law rules.

26

27 **NEW SECTION. Section 5. Arbitration agreement.** (1) An arbitration agreement must:

28 (a) be in a record signed by the parties;

1 (b) identify the arbitrator, an arbitration organization, or a method of selecting an arbitrator;

2 (c) identify the family law dispute the parties intend to arbitrate; and

3 (d) specify how notice to arbitrate is to be given.

4 (2) Except as otherwise provided in subsection (3), an agreement in a record to arbitrate a family law  
5 dispute that arises between the parties before, at the time, or after the agreement is made is valid and  
6 enforceable as any other contract and irrevocable except on a ground that exists at law or in equity for the  
7 revocation of a contract.

8 (3) An agreement to arbitrate a child-related dispute that arises between the parties after the  
9 agreement is made is unenforceable unless:

10 (a) the parties affirm the agreement in a record after the dispute arises; or

11 (b) the agreement was entered during a family law proceeding and the court approved or incorporated  
12 the agreement in an order issued in the proceeding.

13 (4) If a party objects to arbitration on the ground the arbitration agreement is unenforceable or the  
14 agreement does not include a family law dispute, the court shall decide whether the agreement is enforceable  
15 or includes the family law dispute.

16  
17 **NEW SECTION. Section 6. Notice of arbitration.** (1) If the parties have entered into an arbitration  
18 agreement, a party may initiate arbitration by giving notice to arbitrate to the other party in the manner specified  
19 in the arbitration agreement.

20 (2) If the parties have not entered into an arbitration agreement, a party may send a written request to  
21 the other party requesting that the parties agree to arbitrate and enter into an arbitration agreement that  
22 complies with [section 5].

23  
24 **NEW SECTION. Section 7. Motion for judicial relief.** (1) A motion for judicial relief under [sections 1  
25 through 28] must be made to the court in which a proceeding is pending involving a family law dispute subject  
26 to arbitration or, if no proceeding is pending, a court with jurisdiction over the parties and the subject matter.

27 (2) On motion of a party, the court may compel arbitration if the parties have entered into an  
28 arbitration agreement that complies with [section 5] unless the court determines under [section 12] that the

1 arbitration should not proceed.

2 (3) On motion of a party, the court shall terminate arbitration if it determines that:

3 (a) the agreement to arbitrate is unenforceable;

4 (b) the family law dispute is not subject to arbitration; or

5 (c) under [section 12], the arbitration should not proceed.

6 (4) Unless prohibited by an arbitration agreement, on motion of a party, the court may order

7 consolidation of separate arbitrations involving the same parties and a common issue of law or fact if necessary

8 for the fair and expeditious resolution of the family law dispute.

9

10 **NEW SECTION. Section 8. Qualification and selection of arbitrator.** (1) Except as otherwise

11 provided in subsection (2), unless waived in a record by the parties, an arbitrator must be:

12 (a) an attorney in good standing admitted to practice in the state or a retired Montana district court

13 judge; and

14 (b) trained in identifying domestic violence.

15 (2) The identification in the arbitration agreement of an arbitrator or arbitration organization or the

16 method for selecting an arbitrator that is specified in the arbitration agreement controls how an arbitrator is

17 selected.

18 (3) If an arbitrator is unable or unwilling to act, or if the agreed-on method of selecting an arbitrator

19 fails, on motion of a party, the court shall select an arbitrator.

20

21 **NEW SECTION. Section 9. Disclosure by arbitrator -- disqualification.** (1) Before agreeing to

22 serve as an arbitrator, an individual, after making reasonable inquiry, shall disclose to all parties any known fact

23 a reasonable person would believe is likely to affect:

24 (a) the impartiality of the arbitrator in the arbitration, including bias, a financial or personal interest in

25 the outcome of the arbitration, or an existing or past relationship with a party, attorney representing a party, or

26 witness; or

27 (b) the arbitrator's ability to make a timely award.

28 (2) An arbitrator, the parties, and the attorneys representing the parties have a continuing obligation

1 to disclose to all parties any known fact a reasonable person would believe is likely to affect the impartiality of  
2 the arbitrator or the arbitrator's ability to make a timely award.

3 (3) An objection to the selection or continued service of an arbitrator and a motion for a stay of  
4 arbitration and disqualification of the arbitrator must be made pursuant to the arbitration agreement or on  
5 motion of a party to the court.

6 (4) If a disclosure required by subsection (1)(a) or (2) is not made, the court may:

7 (a) on motion of a party not later than 30 days after the failure to disclose is known or by the exercise  
8 of reasonable care should have been known to the party, suspend the arbitration;

9 (b) on timely motion of a party, vacate an award under [section 19(1)(b)]; or

10 (c) if an award has been confirmed, grant other appropriate relief.

11 (5) If the parties agree to discharge an arbitrator or the arbitrator is disqualified, the parties by  
12 agreement may select a new arbitrator or request the court to select another arbitrator as provided in [section  
13 8].

14

15 **NEW SECTION. Section 10. Party participation.** (1) A party may:

16 (a) be represented in an arbitration by an attorney;

17 (b) be accompanied by an individual who will not be called as a witness or act as an advocate; and

18 (c) participate in the arbitration to the full extent permitted under the law and procedural rules of this  
19 state.

20 (2) A party or representative of a party may not communicate ex parte with the arbitrator except to the  
21 extent allowed in a family law proceeding for communication with a judge.

22

23 **NEW SECTION. Section 11. Temporary order or award.** (1) Before an arbitrator is selected and  
24 able to act, on motion of a party, the court may enter a temporary order under 40-4-121.

25 (2) After an arbitrator is selected:

26 (a) the arbitrator may make a temporary award under 40-4-121; and

27 (b) if the matter is urgent and the arbitrator is not able to act in a timely manner or provide an  
28 adequate remedy, on motion of a party, the court may enter a temporary order.

1 (3) On motion of a party, before the court confirms a final award, the court under [section 16], [section  
2 18], or [section 19] may confirm, correct, vacate, or amend a temporary award made under subsection (2)(a).

3 (4) On motion of a party, the court may enforce a subpoena or interim award issued by an arbitrator  
4 for the fair and expeditious disposition of the arbitration.

5  
6 **NEW SECTION. Section 12. Protection of party or child.** (1) As used in this section, "protection  
7 order" means an injunction or other order, issued under the domestic violence, family violence, or stalking laws  
8 of the issuing jurisdiction, to prevent an individual from engaging in a violent or threatening act against,  
9 harassment of, contact or communication with, or being in physical proximity to another individual who is a  
10 party or a child under the custodial responsibility of a party.

11 (2) If a party is subject to a protection order or an arbitrator determines there is a reasonable basis to  
12 believe a party's safety or ability to participate effectively in arbitration is at risk, the arbitrator shall stay the  
13 arbitration and refer the parties to court. The arbitration may not proceed unless the party at risk affirms the  
14 arbitration agreement in a record and the court determines:

15 (a) the affirmation is informed and voluntary;

16 (b) arbitration is not inconsistent with the protection order; and

17 (c) reasonable procedures are in place to protect the party from risk of harm, harassment, or  
18 intimidation.

19 (3) If an arbitrator determines that there is a reasonable basis to believe a child who is the subject of a  
20 child-related dispute is abused or neglected, the arbitrator shall terminate the arbitration of the child-related  
21 dispute and report the abuse or neglect to the department of public health and human services.

22 (4) An arbitrator may make a temporary award to protect a party or child from harm, harassment, or  
23 intimidation.

24 (5) On motion of a party, the court may stay arbitration to review a determination or temporary award  
25 under this section.

26 (6) This section supplements remedies available under law of this state for the protection of victims of  
27 domestic violence, family violence, stalking, harassment, or similar abuse.

28

- 1            **NEW SECTION. Section 13. Powers and duties of arbitrator.** (1) An arbitrator shall conduct an  
2 arbitration in a manner the arbitrator considers appropriate for a fair and expeditious disposition of the dispute.
- 3            (2) An arbitrator shall provide each party a right to be heard, to present evidence material to the family  
4 law dispute, and to cross-examine witnesses.
- 5            (3) Unless the parties otherwise agree in a record, an arbitrator's powers include the power to:
- 6            (a) select the rules for conducting the arbitration;
- 7            (b) hold conferences with the parties before a hearing;
- 8            (c) determine the date, time, and place of a hearing;
- 9            (d) require a party to provide:
- 10           (i) a copy of a relevant court order;
- 11           (ii) information required to be disclosed in a family law proceeding under Title 40; and
- 12           (iii) a proposed award that addresses each issue in arbitration;
- 13           (e) meet with or interview a child who is the subject of a child-related dispute;
- 14           (f) appoint a private expert at the expense of the parties;
- 15           (g) administer an oath or affirmation and issue a subpoena for the attendance of a witness or the  
16 production of documents and other evidence at a hearing;
- 17           (h) compel discovery concerning the family law dispute and determine the date, time, and place of  
18 discovery;
- 19           (i) determine the admissibility and weight of evidence;
- 20           (j) permit deposition of a witness for use as evidence at a hearing;
- 21           (k) for good cause, prohibit a party from disclosing information;
- 22           (l) appoint an attorney, guardian ad litem, or other representative for a child at the expense of the  
23 parties;
- 24           (m) impose a procedure to protect a party or child from risk of harm, harassment, or intimidation;
- 25           (n) allocate arbitration fees, attorney's fees, expert witness fees, and other costs for the parties; and
- 26           (o) impose a sanction on a party for bad faith or misconduct during the arbitration according to  
27 standards governing imposition of a sanction for litigant misconduct in a family law proceeding.
- 28           (4) An arbitrator may not allow ex parte communication except to the extent allowed in a family law

1 proceeding for communication with a judge.

2  
 3 **NEW SECTION. Section 14. Recording of hearing.** (1) Except as otherwise provided in subsection  
 4 (2) or required by law of this state other than [sections 1 through 28], an arbitration hearing need not be  
 5 recorded unless required by the arbitrator, provided by the arbitration agreement, or requested by a party.

6 (2) An arbitrator shall request a verbatim recording be made of any part of an arbitration hearing  
 7 concerning a child-related dispute.

8  
 9 **NEW SECTION. Section 15. Award.** (1) An arbitrator shall make an award in a record, dated and  
 10 signed by the arbitrator. The arbitrator shall give notice of the award to each party by a method agreed on by  
 11 the parties or, if the parties have not agreed on a method, in the manner provided in Title 27, chapter 5.

12 (2) Except as otherwise provided in subsection (3), the award under [sections 1 through 28] must  
 13 state the reasons on which it is based unless otherwise agreed by the parties.

14 (3) An award determining a child-related dispute must state the reasons on which it is based as  
 15 required by the law of this state governing a court order in a child-related dispute.

16 (4) An award under [sections 1 through 28] is not enforceable as a judgment until confirmed under  
 17 [section 16].

18  
 19 **NEW SECTION. Section 16. Confirmation of award.** (1) After an arbitrator gives notice under  
 20 [section 15(1)] of an award, including an award corrected under [section 17], a party may move the court for an  
 21 order confirming the award.

22 (2) Except as otherwise provided in subsection (3), the court shall confirm an award under [sections 1  
 23 through 28] if:

24 (a) the parties agree in a record to confirmation; or

25 (b) the time has expired for making a motion, and no motion is pending, under [section 18] or [section  
 26 19].

27 (3) If an award determines a child-related dispute, the court shall confirm the award under subsection  
 28 (2) if the court finds, after a review of the record if necessary, that the award on its face:



- 1 (a) complies with [section 15] and law of this state governing a child-related dispute; and  
 2 (b) is in the best interests of the child.  
 3 (4) On confirmation, an award under [sections 1 through 28] is enforceable as a judgment.  
 4

5 **NEW SECTION. Section 17. Correction by arbitrator of unconfirmed award.** On motion of a party  
 6 made not later than 30 days after an arbitrator gives notice under [section 15(1)] of an award, the arbitrator may  
 7 correct the award:

- 8 (1) if the award has an evident mathematical miscalculation or an evident mistake in the description of  
 9 a person, thing, or property;  
 10 (2) if the award is imperfect in a manner of form not affecting the merits of the issues submitted; or  
 11 (3) to clarify the award.  
 12

13 **NEW SECTION. Section 18. Correction by court of unconfirmed award.** (1) On motion of a party  
 14 made not later than 90 days after an arbitrator gives notice under [section 15(1)] of an award, including an  
 15 award corrected under [section 17], the court shall correct the award if:

- 16 (a) the award has an evident mathematical miscalculation or an evident mistake in the description of a  
 17 person, thing, or property;  
 18 (b) the award is imperfect in a manner of form not affecting the merits of the issues submitted; or  
 19 (c) the arbitrator made an award on a dispute not submitted to the arbitrator and the award may be  
 20 corrected without affecting the merits of the issues submitted.  
 21 (2) A motion under this section to correct an award may be joined with a motion to vacate or amend  
 22 the award under [section 19].  
 23 (3) Unless a motion under [section 19] is pending, the court may confirm a corrected award under  
 24 [section 16].  
 25

26 **NEW SECTION. Section 19. Vacation or amendment by court of unconfirmed award.** (1) On  
 27 motion of a party, the court shall vacate an unconfirmed award if the moving party establishes that:

- 28 (a) the award was procured by corruption, fraud, or other undue means;

1 (b) there was:

2 (i) evident partiality by the arbitrator;

3 (ii) corruption by the arbitrator; or

4 (iii) misconduct by the arbitrator substantially prejudicing the rights of a party;

5 (c) the arbitrator refused to postpone a hearing on showing of sufficient cause for postponement,  
6 refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to  
7 [section 13], so as to prejudice substantially the rights of a party;

8 (d) the arbitrator exceeded the arbitrator's powers;

9 (e) no arbitration agreement exists, unless the moving party participated in the arbitration without  
10 making a motion under [section 7] not later than the beginning of the first arbitration hearing; or

11 (f) the arbitration was conducted without proper notice under [section 6] of the initiation of arbitration,  
12 so as to prejudice substantially the rights of a party.

13 (2) Except as otherwise provided in subsection (3), on motion of a party, the court shall vacate an  
14 unconfirmed award that determines a child-related dispute if the moving party establishes that:

15 (a) the award does not comply with [section 15] or Title 40;

16 (b) the record of the hearing or the statement of reasons in the award is inadequate for the court to  
17 review the award; or

18 (c) a ground for vacating the award under subsection (1) exists.

19 (3) If an award is subject to vacation under subsection (2)(a), on motion of a party, the court may  
20 amend the award if amending rather than vacating is in the best interests of the child.

21 (4) The court shall determine a motion under subsection (2) or (3) based on the record of the  
22 arbitration hearing and facts occurring after the hearing.

23 (5) A motion under this section to vacate or amend an award must be filed not later than 90 days:

24 (a) after an arbitrator gives the party filing the motion notice of the award or a corrected award; or

25 (b) for a motion under subsection (1)(a), after the ground of corruption, fraud, or other undue means is  
26 known or by the exercise of reasonable care should have been known to the party filing the motion.

27 (6) If the court under this section vacates an award for a reason other than the absence of an  
28 enforceable arbitration agreement, the court may order a rehearing before an arbitrator. If the reason for

1 vacating the award is that the award was procured by corruption, fraud, or other undue means or there was  
2 evident partiality, corruption, or misconduct by the arbitrator, the rehearing must be before another arbitrator.

3 (7) If the court under this section denies a motion to vacate or amend an award, the court may  
4 confirm the award under [section 16] unless a motion is pending under [section 18].  
5

6 **NEW SECTION. Section 20. Clarification of confirmed award.** If the meaning or effect of an award  
7 confirmed under [section 16] is in dispute, the parties may:

8 (1) agree to arbitrate the dispute before the original arbitrator or another arbitrator; or

9 (2) proceed in court under the law of this state governing clarification of a judgment.  
10

11 **NEW SECTION. Section 21. Judgment on award.** (1) On granting an order confirming, vacating  
12 without directing a rehearing, or amending an award under [sections 1 through 28], the court shall enter  
13 judgment in conformity with the order.

14 (2) On motion of a party, the court may order that a document or part of the arbitration record be  
15 sealed or redacted to prevent public disclosure of all or part of the record or award to the extent permitted under  
16 the law of this state.  
17

18 **NEW SECTION. Section 22. Modification of confirmed award or judgment.** If a party requests  
19 under the law of this state a modification of an award confirmed under [section 16] or judgment on the award  
20 based on a fact occurring after confirmation:

21 (1) the parties shall proceed under the dispute resolution method specified in the award or judgment;

22 or

23 (2) if the award or judgment does not specify a dispute resolution method, the parties may:

24 (a) agree to arbitrate the modification before the original arbitrator or another arbitrator; or

25 (b) absent agreement, proceed under the appropriate law of this state governing modification of a  
26 judgment.  
27

28 **NEW SECTION. Section 23. Enforcement of confirmed award.** (1) The court shall enforce an

1 award confirmed under [section 16], including a temporary award, in the manner and to the same extent as any  
2 other order or judgment of a court.

3 (2) The court shall enforce an arbitration award in a family law dispute confirmed by a court in another  
4 state in the manner and to the same extent as any other order or judgment from another state.

5

6 **NEW SECTION. Section 24. Appeal.** (1) An appeal may be taken under [sections 1 through 28]  
7 from:

8 (a) an order confirming or denying confirmation of an award;

9 (b) an order correcting an award;

10 (c) an order vacating an award without directing a rehearing; or

11 (d) a final judgment.

12 (2) An appeal under this section may be taken as from an order or a judgment in a civil action.

13

14 **NEW SECTION. Section 25. Immunity of arbitrator.** (1) (a) An arbitrator or arbitration organization  
15 acting in that capacity in a family law dispute is immune from civil liability to the same extent as a judge of a  
16 court of this state acting in a judicial capacity.

17 (b) The civil immunity provisions of this subsection (1) do not apply to a person employed by or an  
18 entity operated by the state or a political subdivision of the state.

19 (2) The immunity provided by this section supplements any immunity under law of this state.

20 (3) An arbitrator's failure to make a disclosure required by [section 9] does not cause the arbitrator to  
21 lose immunity under this section.

22 (4) An arbitrator is not competent to testify, and may not be required to produce records, in a judicial,  
23 administrative, or similar proceeding about a statement, conduct, decision, or ruling occurring during arbitration,  
24 to the same extent as a judge of a court of this state acting in judicial capacity. This subsection does not apply:

25 (a) to the extent disclosure is necessary to determine a claim by the arbitrator or arbitration  
26 organization against a party to the arbitration; or

27 (b) to a hearing on a motion under [section 19(1)(a) or (1)(b)] to vacate an award, if there is prima  
28 facie evidence that a ground for vacating the award exists.

1           (5) If a person commences a civil action against an arbitrator arising from the services of the arbitrator  
 2 or seeks to compel the arbitrator to testify or produce records in violation of subsection (4) and the court  
 3 determines that the arbitrator is immune from civil liability or is not competent to testify or required to produce  
 4 the records, the court shall award the arbitrator reasonable attorney fees, costs, and reasonable expenses of  
 5 litigation.

6  
 7           NEW SECTION. **Section 26. Uniformity of application and construction.** In applying and  
 8 construing [sections 1 through 28], consideration must be given to the need to promote uniformity of the law  
 9 with respect to its subject matter among states that enact it.

10  
 11           NEW SECTION. **Section 27. Relation to electronic signatures in global and national commerce**  
 12 **act.** [Sections 1 through 28] modify, limit, or supersede the Electronic Signatures in Global and National  
 13 Commerce Act, 15 U.S.C. 7001 et seq., but do not modify, limit, or supersede section 101(c) of that act, 15  
 14 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15  
 15 U.S.C. 7003(b).

16  
 17           NEW SECTION. **Section 28. Transition.** [Sections 1 through 28] apply to arbitration of a family law  
 18 dispute under an arbitration agreement made on or after [the effective date of this act]. If an arbitration  
 19 agreement was made before [the effective date of this act], the parties may agree in a record that [sections 1  
 20 through 28] apply to the arbitration.

21  
 22           NEW SECTION. **Section 29. Codification instruction.** [Sections 1 through 28] are intended to be  
 23 codified as a new chapter in Title 40, and the provisions of Title 40 apply to [sections 1 through 28].

24                                   - END -