

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 243 (Chairman, Judicial Proceedings Committee)
(By Request – Maryland Commission on Uniform State Laws)
Judicial Proceedings

Revised Uniform Arbitration Act

This bill repeals the Uniform Arbitration Act (UAA) and adopts the Revised Uniform Arbitration Act (RUAA). The RUAA was drafted, approved, and recommended for enactment in all states by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 2000.

Fiscal Summary

State Effect: None. The bill gives the circuit courts jurisdiction over applications for judicial relief.

Local Effect: The bill should not have a significant impact on the circuit courts' workload or finances.

Small Business Effect: Potential minimal, for those small businesses that enter into contracts with arbitration clauses.

Analysis

Bill Summary: The following subjects that were not addressed in the UAA are included in the RUAA:

- what forum (arbitrator or court) decides arbitrability of a dispute and by what criteria;

- what forum issues provisional remedies such as attachments, restraining orders, and the like;
- the process for initiating an arbitration;
- authority to consolidate arbitrations;
- requiring arbitrators to disclose facts that may affect impartiality;
- provisions for immunity of arbitrators (comparable to judicial immunity) and arbitration organizations;
- whether arbitrators can be required to testify in other proceedings;
- authority of arbitrators to order discovery, issue protective orders, decide motions for summary dispositions, hold prehearing conferences, and otherwise manage the arbitration process;
- provisions for courts to enforce pre-award rulings by an arbitrator;
- defining arbitration remedies, including provisions for attorney's fees, punitive damages, and other exemplary relief;
- specifying which sections of RUAA are not waivable, or that cannot be unreasonably restricted (to ensure fundamental fairness, particularly in contract of adhesion situations);
- provisions for enforcing subpoenas to witnesses who reside in states other than the arbitration state;
- provisions for vacating an award when arbitrators fail to disclose facts that could reasonably affect impartiality; and
- standards for giving and receiving notice in arbitration proceedings.

The RUAA also makes technical and clarifying amendments to other UAA provisions.

Background: Arbitration is a process under which parties to a contract agree that disputes will be decided by a neutral third party, usually without right of appeal of the arbitrator's decision. Arbitration clauses are sometimes required by statute, but are more often included in contracts by agreement of the parties. They have been used increasingly in recent years to avoid the length and high cost of litigation. While courts may become involved in questions of whether arbitration was appropriate and in enforcing arbitration agreements, their involvement is significantly less than it was prior to the widespread adoption of the UAA.

A contract of adhesion generally does not involve an arm's-length negotiation, but consists of terms presented on a take-it-or-leave-it basis. It implies an inequality in bargaining power.

NCCUSL is comprised of more than 300 lawyers, judges, and law professors who draft model laws on subjects such as commercial law, family law, electronic transactions, and health care, and work toward their enactment in state legislatures.

The UAA was adopted by NCCUSL in 1955 and has been enacted in 35 states, including Maryland. Similar laws have been adopted in an additional 14 states. The UAA closely tracks the provisions of the Federal Arbitration Act, which preempts state laws when the underlying activity under consideration involves interstate commerce.

The RUAA has been adopted without significant amendment in Hawaii, North Carolina, and Utah. Nevada, New Jersey, New Mexico, North Dakota, and Oregon have adopted the RUAA, with amendments.

Additional Information

Prior Introductions: None.

Cross File: HB 321 (Chairman, Judiciary Committee) (By Request – Maryland Commission on Uniform State Laws) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General, Department of Legislative Services

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