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Testimony of Houston Putnam Lowry
Member, Executive Committee of the
Alternative Dispute Resolution Section of the Connecticut Bar Association
House Bill 6628, An Act Adopting the Revised Uniform Arbitration Act
Judiciary Committee
March 20, 2009

My name is Houston Putnam Lowry¹. I serve on the Executive Committee of Alternative Dispute Resolution Section of the Connecticut Bar Association. The section has a great interest in bills effecting arbitration and alternative dispute resolution procedures. On behalf of the section, I respectfully request that the committee **favorably report** House Bill 6628, An Act Adopting the Revised Uniform Arbitration Act.

In addition to the CBA, the Revised Uniform Arbitration Act is supported by the American Bar Association, the American Arbitration Association, the National Academy of Arbitrators and the National Arbitration Forum. It has been adopted by Alaska, Colorado, District of Columbia, Hawaii, Nevada New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Utah, and Washington.

The Revised Uniform Arbitration Act is an update by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") on the original 1956 Uniform Arbitration Act. Although Connecticut never adopted the original Uniform Arbitration Act, Connecticut's statute bears a strong resemblance to the final NCCUSL product. The revision primarily codifies existing case law and progressively develops the law of arbitration² without violating existing federal law on the subject.³ The following are important new features of the Revised Uniform Arbitration Act:

1. **Electronic Agreements.** The bill enforces agreements to arbitrate that appear in electronic documents (§1(6) and §6(a)). This is in accordance with Connecticut's enactment of the Uniform Electronic Transactions Act.⁴
2. **Applying to court does not waive arbitration.** The bill clarifies that a party may apply to a court for relief without automatically waiving their

¹ A member of Brown & Welsh, P.C.

² Connecticut General Statutes §52-408, *et seq.*

³ 9 USC §1, *et seq.*

⁴ Connecticut General Statutes §1-266, *et seq.*

right to arbitrate as provided in their agreement (§6, Uniform Law comment 5).

3. **Provisional remedies.** While the existing Connecticut arbitration statute does not make it clear prejudgment remedies may be granted, a practice has arisen allowing them. The preferred practice is codified in this bill (§8). If an arbitrator issues a provisional remedy, the court is specifically authorized to enforce the order (§19 and §23).
4. **Disclosure.** Current Connecticut law does not require disclosure of facts which might call the arbitrator's impartiality into question. Better practice (and this law-§12(a)) requires disclosure to the parties. Awards have been overturned because arbitrators have not disclosed existing facts which have subsequently led the parties to question their impartiality.
5. **Procedure.** An arbitrator must conduct the arbitration in a fair and expeditious manner (§15(a)).
6. **Award clarification and correction.** This act explicitly allows an arbitrator to clarify or correct an award (§20).

Section 25(c) of the Revised Uniform Arbitration Act⁵ was omitted from this bill. It should be inserted after line 485.

Arbitration agreements governed by Chapter 862⁶ are not intended to be governed by this act. Line 33 should be amended to include Chapter 862 in the list of excluded chapters.

The Revised Uniform Arbitration Act is not intended to make broad changes to Connecticut's arbitration act.⁷ It is not intended to modify the current powers of arbitrators to issue awards or the scope of those awards. It is intended to make it easier for the parties and the arbitrator to comply with the law by codifying existing best practice. The law of arbitration should be readily available even to those who do not arbitrate frequently.

For these reasons, the CBA Alternative Dispute Resolution requests that the Judiciary Committee **favorably report** House Bill 6628 (as modified in accordance with our two suggestions.

⁵ Which reads: (c) On [application] of a prevailing party to a contested judicial proceeding under Section 22, 23, or 24, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

⁶ UNCITRAL Model Law on International Commercial Arbitration, as codified in Title 50a.

⁷ This bill does **NOT** affect international commercial arbitrations, which are covered by an entirely separate statute, Connecticut General Statutes §50a-100, *et seq.*