

JUDICIARY HEARING – MARCH 20, 2009

REVISED UNIFORM ARBITRATION ACT

Raised HB 6628

Testimony of Barry C. Hawkins

Senator McDonald, Representative Lawlor, Members of the Judiciary Committee. Thank you for the opportunity of commenting on HB 6628. My name is Barry C. Hawkins. I reside in Bridgeport, Connecticut and I am a partner in the law firm of Shipman & Goodwin, in it's Stamford office. It has been my honor for the past ten years to serve as one of the Uniform Law Commissioners for the State of Connecticut. One of my many duties as a Commissioner was to serve on the RUAA Drafting Committee, chaired by Attorney Francis Pavetti.

As detailed statements have already been submitted to the Committee by Attorney Pavetti and Attorney Henry Mazadorian, I will confine my remarks to responding to statements in opposition to HB 6628 submitted by the Legal Assistance Resource Center of Connecticut Inc. (Raphael S. Podolsky), Attorney Joanne S. Faulkner, The Connecticut Trial Lawyers Association and the Insurance Association of Connecticut.

I will address Attorney Podolsky's remarks first. These are mostly very familiar to me and are very similar to those previously submitted to this Committee including last year. 95% of his issues are the so called consumer rights agenda and have little if anything to do with RUAA. As was observed by Chairman McDonald last year, they should be addressed by Connecticut, if at all, in a separate bill dealing with a consumer agenda. However, in each of these so called "state solutions" including the attached "Proposed Addition to HB6628", the suggested improvements would all be in violation of the Federal Arbitration Act, which has pre-empted this field of legislation. Accordingly, Connecticut is the wrong venue to seek enactment of this consumer rights agenda. In fact, Congress is presently considering the enactment of changes to the FAA as proposed in HR1020 and HR991, which would modify FAA as desired by Attorney Podolsky. That is the sole venue in which he should be seeking legislative change.

The only new addition to Attorney Podolsky's testimony is State Solution Part II, where he objects to the removal of previous Section 21(c) of the Act. That amendment is not a weakening of the RUAA as he claims but is simply a response to the concern of the Insurance Association of Connecticut voiced last year, that damages could be awarded in an arbitration proceeding even if not allowed to be awarded by a court in Connecticut. The removal of §21(c) leaves Connecticut law on that point unchanged, and was offered as a compromise in response to a voiced concern.

The testimony of Attorney Joanne S. Faulkner suffers from the same defects as that of Attorney Podolsky, in that the proper way to advance the so-called consumer rights agenda is in Congress with the pending amendments to FAA mentioned above. None of the proposals outlined in Attorney Faulkner's testimony have been enacted in any other state, all are federally preempted and all are misguided or reflect incorrect understandings of RUAA.

I am at a loss to comprehend or react to the testimony of the Connecticut Trial Lawyers Association in opposition to Revised Bill 6628. It mistakenly but repeatedly identifies it as the Uniform Arbitration Fairness Act, apparently confusing it with the Federal Arbitration Act Amendment (HR 1020) known as Arbitration Fairness Act of 2009.

CLTA apparently believes that RUAA is in some way a ratification of imposing pre-dispute mandatory arbitration clauses upon consumers and non-union employees. I hesitate to say it in this forum, but they are simply in the wrong church. RUAA is about how to better conduct arbitration that the parties have agreed to arbitrate.

The testimony of the Insurance Association of Connecticut is a rehash of a now familiar tune, which ignores the reality of the provisions of RUAA and attacks it for features which are simply not there.

The assertion that RUAA confers power in the Arbitrator to award punitive damages is wrong. Existing case law already allows arbitrators to award punitive damages and awards of punitive damages currently occur in Connecticut arbitrations. RUAA does not create that power. What RUAA does, however, is to provide an express control mechanism on the process which requires that the arbitrator specify in the award the basis in fact and in law if the arbitrator is making an award of punitive damages. No such control mechanism exists under current Connecticut law.

As for allowing Attorneys fees, they are limited in RUAA only to what would be allowed in a civil action in Connecticut for the same type of claim. Under existing Connecticut law, attorneys fees are only allowed if agreed upon by the parties or if prescribed by a separate statute for a specified type of claim.

The assertion that RUAA does not provide recourse for contesting a punitive damages award is simply wrong. If the arbitrator fails to justify the award under the facts and under the law, the award can be vacated by the reviewing court under Section 23(a)4 of RUAA for the reason that the arbitrator would have exceeded the arbitrator's powers. No foundation to apply 23(a)4 for this recourse exists under current Connecticut law. RUA fills that void.