

BILL NO. 6608 THE REVISED UNIFORM ARBITRATION ACT (RUAA)

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Attorney Pavetti practiced law in New London for 42 years. He has been a Uniform Law Commissioner for Connecticut for the past 30 years as well as for the National Uniform Law Commission. He participated in the drafting of numerous Uniform Acts. He was Chairman at the national level of the Drafting committee for the Revised Uniform Arbitration Act

Why Revise the Original Uniform Arbitration Act (UAA)?

The original UAA was approved in 1955 by the National Uniform Law Commissioners (ULC). It was a bare bones Act that is now badly outdated. Today, arbitration is a vital alternative to litigation, chosen by numerous individuals and businesses to resolve disputes in many areas of the law. More than ever before, the states need to update and revise the UAA in light of the increased use of arbitration, the pro-arbitration policy of the Courts, the greater complexity of the disputes submitted to arbitration, and the need to resolve ambiguities, fill in gaps and codify the developing case law over the past 56 years. It is clear that many parties have chosen this alternative over litigation and it is critical to provide these parties with a clear, balanced, reasonable and fair set of guidelines to govern its process.

RUAA Provisions Which Are Not Covered By the Original UAA or in Connecticut

Determining Arbitrability RUAA resolves the widespread confusion over who decides arbitrability and by what criteria. The rationale of this RUAA provision which provides for the arbitrator to make this determination was expressly relied on heavily as precedent by the U.S. Supreme Court in an important arbitration case. *See Howsam v Dean Witter Reynolds, Inc.* 537 U.S. 79 (2002).

Provisional Remedies Occasions arise where a restraining order, attachment or other provisional remedy is necessary in an arbitration in order to maintain the status quo in the proceeding and make it possible for the ultimate award to be effective. RUAA provides for this.

Consolidation In situations where separate arbitrations involve the same transactions or parties, RUAA establishes a way to consolidate the arbitrations if no one is prejudiced so that unnecessary time and expense are reduced for the parties.

Arbitrator Disclosure of Conflicts RUAA strengthens the fairness and impartiality of arbitration by requiring arbitrators to disclose known financial interests or personal relationships that could affect impartiality of the arbitrator. If a neutral arbitrator fails to disclose such a relationship, this failure may be used to establish "evident partiality" which is a ground for which the Court could vacate the award made by the culpable arbitrator.

Arbitrator Immunity The willingness of highly qualified individuals to serve as arbitrators is essential and is enhanced by RUAA provisions which grant immunity to arbitrators from being sued by parties, similar to the immunity currently provided to judges

Obtaining Necessary Evidence RUAA recognizes that parties to arbitrations sometimes need to obtain important evidence to fairly present their positions on issues. RUAA addresses this need by allowing a limited form of discovery. All discovery is controlled by the arbitrator. The arbitrator decides the extent of the discovery based on demonstrated need while taking in to account the desirability of making the proceeding fair, expeditious, and cost effective.

Pre-hearing Conferences RUAA expressly authorizes the parties and the arbitrator to confer in advance of the actual hearing. Pre-hearing conferences can be beneficial in terms of the efficiency and cost effectiveness of the arbitration process. For example, issues can be clarified, facts can be stipulated, documents can be exchanged and witnesses can be identified.

Addressing Existing Law on Punitive damages First, it must be clearly understood that current Connecticut case law (and not RUAA) makes punitive damages already available in an arbitration. RUAA wisely guards against an arbitrator's improper exercise of punitive damages awards by statutorily requiring that the arbitrator state in writing the basis in fact and in law if punitive damages are made a part of the award. Failure of the arbitrator to so state, or if erroneously stated, can result in the award being vacated for having exceeded the arbitrator's authority.

Initiating arbitration The UAA is silent on how to initiate arbitration. RUAA fills this gap by setting forth the steps for initiating the arbitration and giving notice to adverse parties.

Electronic Records RUAA is drafted to allow for the use of electronic records, contracts and signatures consistent with the computer and technology age and appropriate federal law.

Party Autonomy The existing UAA does not state whether any of its provisions may be varied or waived by the parties in their agreement to arbitrate. This results in a loss of party autonomy because of this uncertainty and the implication that all of the provisions are mandatory. RUAA preserves party autonomy and corrects this problem by expressly specifying which provisions may be varied or waived by agreement thus allowing the parties to shape an arbitration agreement to meet their needs. Most of the RUAA provisions may be varied or waived. However, in order to protect parties with lesser bargaining power, certain basic provisions may not be waived such as the right to an attorney, and rights to request confirmation, vacatur, modification or enforcement of the award.

RUAA Only Applies When There Is An Agreement to Arbitrate Because RUAA only applies only where there is an agreement to arbitrate, arbitrations prescribed and required by state statute are not covered by RUAA. Thus, statutory labor arbitrations and lemon law arbitrations, and other such statutory arbitrations are not covered.

The Doctrine of Federal Preemption When enacting state statutes, it is extremely important to understand and apply the federal preemption doctrine. Under federal preemption, the Federal Arbitration Act (FAA) governs all arbitration agreements involving interstate commerce. Interstate commerce is defined so broadly that almost everything in the commercial world is covered by it. The FAA provides that arbitration agreements shall be valid, irrevocable and enforceable except for grounds recognized by law for the revocation of all contracts. This has been construed by the United States Supreme Court to mean that an arbitration agreement cannot be singled out for invalidation or restrictive application by a state statute except for grounds that exist for invalidation or restriction for all other types of contracts. For example, in the case of consumer contracts which contain an arbitration agreement, this means that the arbitration agreement cannot be singled out for separate treatment in a state statute except for grounds under the contract law applying to all types of contracts. Case law is very specific and consistent on this point. For example, the U.S. Supreme Court federally preempted and struck down a state statute which required that all franchise contracts containing an arbitration agreement include on the face of the contract words in prominent print that the contract is subject to arbitration. This demonstrates the strong restraints of federal preemption pertaining to arbitration. *See Doctor's*

Associates v. Casarotto, 116 S.Ct. 1652 (1996). Therefore , RUAA as a state statute is unable to include special invalidating provisions or restrictive carve outs pertaining only to consumer or any other special interest groups. Because of federal preemption such special treatment which is not applicable to all types of contracts can only be done by congressional amendment of the Federal Arbitration Act.

Conclusion RUAA was carefully drafted in a lengthy and balanced deliberative process open to all interested parties. It has received the support and endorsement of many preeminent legal and arbitration organizations appearing on the attached list. Connecticut will be well served by its enactment.

ENDORSEMENTS OF THE REVISED UNIFORM ARBITRATION ACT

The Revised Uniform Arbitration Act has been endorsed by the following:

American Arbitration Association;

Jams Dispute Resolution Organization;

National Academy of Arbitrators;

American Bar Association as a full association position;

Individual ABA Sections for following fields of law:

Dispute Resolution;

Litigation;

Business Law;

Torts and Insurance Practice;

Real Property, Trusts and Probate;

Labor and Employment Law;

Senior Lawyers;

Association of the Bar of the City of New York and the New York State Bar Association;

American College of Real Estate Lawyers.

Endorsements from Connecticut include:

2009 Joint Favorable Report (Unanimous) of Judiciary Committee, General Assembly;

Connecticut Judicial Department;

Connecticut Bar Association

Individual CBA Sections on:

Litigation, 2003;

Dispute Resolution; 2011

Connecticut Association of Realtors.