

Understanding Basic Arbitration Statutory Law in Kansas and Missouri:

Arbitration 101 for Practitioners

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Author's Note:

This month's newsletter discusses key provisions of Kansas' arbitration statutory law. Next month's newsletter will discuss key provisions in Missouri arbitration statutory law. The information provided is not intended to be a thorough review of state arbitration statutory law but, rather, to provide a quick overview of the respective state statutes.

I. OVERVIEW

A. The Federal Arbitration Act

The United States law governing arbitration is codified through the United States Arbitration Act (9 U.S.C. §§1-16), more commonly known as the Federal Arbitration Act (FAA). Established by Congress in 1926, the FAA's three chapters validate agreements to arbitrate and provide limited grounds for the judicial review of awards.

B. The Uniform Law Commission

The Uniform Law Commission (ULC), formally called the National Conference of Commissioners of Uniform State Laws, drafts model laws, in an attempt to make state laws consistent across the country, which states are then free to adopt. It is a non-partisan organization made up of lawyers, judges, legislators, and law professors from all U.S. states and territories. The ULC has drafted a number of model laws including, but not limited to, the Uniform Commercial Code, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Probate Code. The Commission has also established the Uniform Arbitration Act and the Revised Uniform Arbitration Act, which are referenced in this article.

The ULC promulgated the Uniform Arbitration Act (UAA) in 1955. This Act was designed to provide a uniform legal framework for arbitration across the United States.

The ULC formally approved the Revised Uniform Arbitration Act (RUAA) in 2000. The RUAA was intended to modernize and address due process deficiencies that were identified since the original Uniform Arbitration Act of 1955 was promulgated.

II. KANSAS AND MISSOURI ARBITRATION LAWS

A. Kansas Arbitration Law

In 2018, Kansas adopted the Revised Uniform Arbitration Act (RUAA). It is Kansas codified the RUAA at K.S.A. 5-423 through K.S.A. 5-453, entitled the “Uniform Arbitration Act,” effective July 1, 2018. Kansas adopted the RUAA as a matter of public policy to modernize and align state procedures with national standards and promote consistency.

B. Missouri Arbitration Law

Missouri originally enacted the older Uniform Arbitration Act in 1980, codified at Mo. Revised Stat. §§ 435.350—435.470. In 2001-2002, Missouri passed legislation intended to replace the prior Uniform Arbitration Act with the Revised Uniform Arbitration Act (RUAA) with many, but not all, of the RUAA provisions. The Missouri legislation stated that the new provisions “may be cited as the ‘Revised Uniform Arbitration Act,’” but the full legislative package is a modified version of the RUAA.

III. THE UNIFORM ARBITRATION ACT IN KANSAS: BASIC LEGAL FRAMEWORK AND KEY PROVISIONS

K.S.A. 5-423 – Definitions

Defines key terms used throughout the Act, including “arbitration organization,” “arbitrator,” “court,” “knowledge,” “person,” and “record.”

K.S.A. 5-424 – Notice

Explains how notice is given, when a person is deemed to have notice, and when notice is received.

K.S.A. 5-425 - When Act Applies

Provides that the Act applies to arbitration agreements made on or after July 1, 2018, and may also apply to earlier agreements if the parties agree in the record.

K.S.A. 5-426 - Effect of Agreement to Arbitrate - Nonwaivable Provisions

Provides that certain protections and court-related rules cannot be waived in advance.

K.S.A. 5-427 - Application for Judicial Relief

Allows for a party to seek court assistance to help in an arbitration-related dispute in a manner provided by law or rule of court for making and hearing motions.

K.S.A. 5-428 - Validity of Agreement to Arbitrate

Provides that arbitration agreements are generally enforceable, subject to ordinary contract defenses. A written arbitration agreement is generally “valid, enforceable and irrevocable,” except on standard contract grounds.

K.S.A. 5-429 - Motion to Compel or Stay Arbitration

Permits a party to ask the court to order arbitration or pause court litigation while an arbitration goes forward.

K.S.A. 5-430 - Provision Remedies

Permits temporary court or arbitrator relief, including emergency orders, to protect the arbitration process.

K.S.A. 5-431 – Initiation of Arbitration

Provides for notice requirements to initiate an arbitration proceeding.

K.S.A. 5-432 - Consolidation of Separate Arbitration Proceedings

Permits the court to order consolidation of separate arbitration proceedings under certain circumstances.

K.S.A. 5-433 Appointment of Arbitrator; Service as a Neutral Arbitrator

Provides how arbitrators are selected, and what happens if the agreed method fails or no method exists.

K.S.A. 5-434 - Disclosures by Arbitrator

Provides that an arbitrator has a continuing obligation to disclose facts that could affect impartiality, including a financial or personal interest in the arbitration and existing or past relationship(s) with any of the parties to the agreement to arbitrate.

K.S.A. 5-435 - Action by Majority

Provides that if there is more than one arbitrator appointed, the powers of an arbitrator must be exercised by a majority of the arbitrators.

K.S.A. 5-436 - Arbitrator Immunity; Competency Testifying; Attorneys' Fees and Costs

Protects arbitrators and arbitration organizations from civil liability to the same extent as a judge. The court may award the arbitrator, organization, or representative of an organization reasonable attorneys' fees and other reasonable expenses of litigation.

K.S.A. 5-437 - Arbitration Process

Establishes basic hearing and procedural rules for the arbitration.

K.S.A. 5-438 - Representation by a Lawyer

Provides that a party to an arbitration proceeding may be represented by a lawyer.

K.S.A. 5-439 - Witnesses; Subpoenas; Depositions; Discovery

Provides for the issuance of subpoenas, the allowance of a deposition of any witness, discovery and issuance of protective orders.

K.S.A. 5-440 - Judicial Enforcement of Pre-Award Ruling by Arbitrator

Allows courts to enforce certain interim rulings made by the arbitrator before the final award.

K.S.A. 5-441 - Award

Provides that the arbitrator shall make a record of an award made within the time specified by the agreement to arbitrate.

K.S.A. 5-442 - Change of Award by Arbitrator

Authorizes the arbitrator to modify or clarify an award under limited circumstances.

K.S.A. 5-443 - Remedies; Fees and Expenses of Arbitrator Proceeding

Provides that the arbitrator may award punitive damages, attorneys' fees and expenses, including the arbitrator's expenses and fees.

K.S.A. 5-444 - Confirmation of Award

Permits parties to make a motion to the court for an order confirming the award unless a proper basis exists to alter it.

K.S.A. 5-445 - Vacating Award

Establishes limited grounds for setting aside an award for corruption, fraud, evident impartiality, misconduct, exceeding the arbitrator's powers, lack of an agreement to arbitrate, or lack of notice. A motion must generally be filed within 90 days after notice of the award.

K.S.A. 5-446 - Modification or Correction of Award

Permits the court to correct certain mistakes in the award, such as mathematical miscalculations, an award on a claim not submitted to the arbitrator, or matters decided incorrectly in form rather than in substance.

K.S.A. 5-447 - Judgment on Award, Attorneys' Fees and Litigation Expenses

Allows that upon granting an order confirming the award, the court may allow reasonable costs of the motion and subsequent judicial proceedings.

K.S.A. 5-448 - Jurisdiction

Provides that a court having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

K.S.A. 5-449 - Venue

Establishes where arbitration-related court proceedings shall be filed.

K.S.A. 5-450 - Appeals

Establishes that arbitration-related orders can be appealed, including orders denying arbitration, an order confirming or denying confirmation of an award, an order modifying or correcting an award, an order vacating an award, and final judgments.

K.S.A. 5-451 - Uniformity of Application and Construction

Provides that, in implying and construing the Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter consistent with other states' versions of the RUAA.

K.S.A. 5-452 - Relationship to Electronic Signatures in Global and National Commerce Act

Provides that electronic records or electronic signatures conform to Section 102 of the Electronic Signatures in Global and National Commerce Act.

K.S.A. 5-453 - Savings Clause

Preserves arbitration rights under prior law

IV. CONCLUDING AUTHOR'S OBSERVATIONS & SUGGESTIONS

A few months ago, a student intern asked me how long I have served as a mediator and arbitrator. After a brief, frantic mental calculation, I told her that I have been mediating commercial matters for over 30 years and, during that period, have served as an arbitrator for almost 25 years. In recent months, friends and legal colleagues have been approaching me more frequently to ask questions about the arbitration process. Some have inquired whether to include mediation/arbitration provisions within contracts or policy documents. From time to time, other colleagues, approaching arbitration for the first time, have sought my opinion on the “action steps” that should be taken to prepare for arbitration.

When asked what practical steps counsel unfamiliar with the arbitration process should consider, I often offer the following suggestions:

- Carefully re-read the agreement to arbitrate;
- Determine whether the arbitration agreement establishes an approved arbitration provider or simply provides for arbitration under state law;
- If the arbitration is to be conducted through the services of a provider such as the American Arbitration Association (AAA), JAMS, or another private arbitration provider, it is important to carefully review that organization's pertinent arbitration rules;
- Carefully review the arbitrator selection process;
- Meet with your client to ensure that your client understands all aspects of the arbitration procedure well in advance of the arbitrator's Preliminary Hearing Conference.
- It is helpful to consider conferring with opposing counsel prior to the arbitrator's Preliminary Hearing Conference to discuss discovery issues, expert witnesses, length of the hearing, and whether the arbitration hearing should be in person or virtual.

Because state arbitration statutes differ significantly, I generally avoid giving suggestions regarding state statutory arbitration procedures for states other than Kansas and Missouri. The article above is intended to provide attorneys in this region with a simple “go-to-guide” to the Kansas arbitration statutes. Next month's newsletter will discuss key provisions in the Missouri arbitration statutory law.