

Understanding Basic Arbitration Statutory Law in Missouri and Kansas: *Arbitration 101 for Practitioners* By Larry R. Rute



Author's Note:

This month's newsletter discusses key provisions of Missouri's arbitration statutory law. In case you missed it, we focused on Kansas' arbitration statutory laws in last month's newsletter.

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. MISSOURI AND KANSAS ARBITRATION LAWS

A. 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Missouri originally enacted the older Uniform Arbitration Act in 1980, codified at Mo.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.

B. Kansas Arbitration Law

In 2018, Kansas adopted the Revised Uniform Arbitration Act (RUAA). Kansas has 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.

III. THE MISSOURI REVISED UNIFORM ARBITRATION ACT: BASIC LEGAL FRAMEWORK AND KEY PROVISIONS

RSMo 435.350: Validity of arbitration agreement, exceptions.

Written arbitration agreements are enforceable and irrevocable, unless grounds exist in law or in equity for the revocation of the contract. This rule excludes contracts of insurance and contracts of adhesion.

RSMo 435.355: Proceedings to compel or stay arbitration.

If there is a valid arbitration agreement, the court will generally enforce that agreement unless there is a genuine dispute whether the parties agree to arbitration. Once the court determines that arbitration is required, the court will defer to the arbitrator to handle the dispute.

RSMo 435.360: Appointment of arbitrators by court.

If the process for arbitration selection within the agreement fails, cannot be followed, or the arbitrator cannot serve, the court can appoint a replacement with all the powers of one specifically named in the agreement.

RSMo 435.365: Majority action by arbitrators.

If there are multiple arbitrators, majority rules unless the agreement says otherwise.

RSMo 435.370: Hearing.

The arbitrators schedule the hearing and must give the parties at least five days’ notice. If a party is absent after proper notice, the arbitrators can proceed without them. When there are multiple arbitrators, a majority can make decisions if an arbitrator becomes unable to serve.

RSMo 435.375: Representation by attorney.

Parties to an arbitration hearing have the right to an attorney unless the right is waived.

RSMo 435.380: Witnesses, subpoenas, depositions.

Arbitrators can require witnesses to testify, take depositions, and production of documents and evidence. They can administer oaths and issue subpoenas. Participants (parties, witnesses, etc.) have the same legal obligations as they do in court.

RSMo 435.385: Award.

The award determination must be written, signed by the agreeing arbitrators, and delivered to the parties by the agreed deadline. The parties may extend the deadline in writing. If a party believes the arbitrator(s) missed the deadline, the party must object before receiving the award or the right to object is waived.

RSMo 435.390: Change of award by arbitrators.

After an arbitration decision is issued, a party has 20 days to request correction or clarification. The opposing party must be notified of such action and has 10 days to object. A court can also request correction or clarification.

RSMo 435.395: Fees and expenses of arbitration.

Unless otherwise provided in the agreement to arbitrate, the arbitrator's award will determine which party will pay the arbitrators' fees and other arbitration-related expenses (this does not include counsel fees).

RSMo 435.400: Confirmation of an award.

The court will generally approve and enforce an arbitration award upon party request. If a party challenges the award, the court will consider that challenge.

RSMo 435.405: Vacating an award — de novo judicial review, when.

Courts will vacate an arbitration award in cases of fraud, arbitrator bias or misconduct, exceeded arbitrator authority, unfair process, or absence of a valid arbitration agreement. A party has 90 days after award delivery to request vacatur. If the court refuses to vacate the award and there was no party request to modify or correct the award, the court will confirm the award.

RSMo 435.410: Modification or correction of award.

Within 90 days after the delivery of a copy of the Award to the applicant, the court, upon application, shall modify or correct the Award where: (1) there is evident miscalculation of figures or an evident mistake in the description of any person, thing or property; (2) the arbitrator has made an award on the matter not submitted to them, and the Award may be corrected without affecting the merits of the decision; or (3) the Award is imperfect in a matter of form, not affecting the merits of the controversy.

If the application is granted, the court shall modify and correct the Award to effect its intent or otherwise confirm the Award as made.

RSMo 435.415: Judgment or decree on award — certain arbitration awards not binding, not .

Once a court confirms an arbitration award, it becomes an enforceable court judgment. However, when the award involves personal injury, bodily injury, or death, the award generally cannot be used to collect money from an insurer unless the insurer agreed in writing to the arbitration. This section has exceptions for arbitrations required by law or agreements made before the injury or loss occurred.

RSMo 435.420: Judgment roll, docketing.

Once a court enters a judgment, the clerk creates and enters an official record containing the arbitration agreement, the award, the court's order concerning the award, and the final judgment.

RSMo 435.425: Applications to court.

Normal court rules apply to notices provided by law or rule of court for making and hearing of motions.

RSMo 435.430: Court, jurisdiction.

The term "**court**" means any court of competent jurisdiction in Missouri, and agreement to arbitrate in Missouri confers Missouri jurisdiction.

RSMo 435.435: Venue.

File where arbitration was agreed to occur. If there is no designated location, file where the opposing party lives or does business. If the opposing party is not located in Missouri, file in Cole County.

RSMo 435.440: Appeals.

Parties may appeal the validity of arbitration, award confirmation, modification, or vacatur, and judgments entered based on the arbitration. The appeal follows the same rules as an appeal in an ordinary civil case.

RSMo 435.445: Act not retroactive.

This act only applies to agreements entered into after this act was adopted.

RSMo 435.450: Uniformity of interpretation.

Missouri's arbitration laws should be interpreted consistently with the same arbitration laws adopted by other states.

RSMo 435.455: Constitutionality.

If one section of this law is deemed invalid, the rest of the sections still stand.

RSMo 435.460: Notice of arbitration provisions required.

If a contract contains an arbitration provision, the contract must put a prominent warning about arbitration next to or above the signature lines in ten-point capital letters, stating:

"THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES."

RSMo 435.465: Application of law.

This statute applies to written arbitration agreements involving private people and commercial persons. "Commercial persons" includes all people and legal entities except government entities and agencies.

RSMo 435.470: Short title.

This section may be cited as the "Uniform Arbitration Act".

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 be considered, 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 before 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.

The above articles intend to provide attorneys in this region with a simple "go-to guide" to Missouri arbitration statutes. The information provided is not intended to be a thorough review of Missouri's arbitration statutory law but, rather, to provide a quick overview for the busy practitioner.

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