

**TESTIMONY OF LARRY R. RUTE  
KANSAS BAR ASSOCIATION**

*Written Testimony in Support of HB 2533  
Before the House Judiciary Committee  
Rep. Fred Patton, Chair  
February 5, 2020*

Chair Patton and Members of the Committee,

I would like to thank the Chair and Members of the Committee for the opportunity to submit my testimony today. Unfortunately, I cannot appear in person as I am involved in a business matter outside of the country.

Throughout my 46 years in the legal profession I have been a member of the Kansas Bar Association (KBA). I currently serve as Legislative Liaison for the KBA's Alternative Dispute Resolution Section. It is in this capacity that I appear before you today.

In my private practice, I am the Managing Member of Associates in Dispute Resolution LLC (ADR, LLC), with offices in Topeka and Kansas City. Our law firm provides a panel of highly experienced retired judges, litigators, business executives and law professors who are dedicated to providing high-quality mediation, arbitration and other cost-effective conflict resolution techniques on behalf of individuals, law firms and businesses. I serve as an Arbitrator on behalf of the American Arbitration Association, FINRA, National Arbitration & Mediation, and ADR, LLC.

The Uniform Law Commission promulgated the Uniform Family Law Arbitration Act (UFLAA) in 2016. Due to the increase and the use of arbitration in family law matters, the Commission recognized that a uniform act was necessary to make sure that the family law arbitration process kept up with the increasing use of arbitration as a technique to resolve complex family law issues.

**HISTORICAL BACKGROUND**

The Uniform Law Commission is a not-for-profit that formed in 1892 to create non-partisan state legislation. Over 350 volunteer Commissioners (lawyers, judges, law professors, legislative staff and others) work together to draft laws ranging from the Uniform Commercial Code to Acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable. In 2016, the ULC completed its drafting of the Uniform Family Law Arbitration Act. Some of the finest legal minds volunteered to lend their expertise during the Commission proceedings to forge the UFLAA. As a result, the Act has generated the support of the American Bar Association. The UFLAA has recently been adopted by three states: Arizona, Hawaii and North Dakota.

**THE UNIFORM FAMILY LAW ARBITRATION ACT**

Arbitration is a private process whereby the parties' contract to select an arbitrator and resolve a dispute through the arbitration process rather than going to court. During the arbitration, a neutral arbitrator hears arguments from the parties, evaluates evidence and makes a decision (Award) to decide the dispute.

The UFLAA sets out arbitration procedures chronologically, from defining an arbitration agreement to providing standards for vacating a confirmed award. Many other provisions of the UFLAA will be familiar to arbitrators and practitioners in the dispute resolution field. This is because the UFLAA is based, in part, on the Uniform Arbitration Act (1955) and the Revised Uniform Arbitration Act (2000). Last year, the Kansas Legislature passed the Revised Uniform Arbitration Act. The UFLAA's provisions for arbitrator disclosure, award, appeals, and arbitrator immunity, among others, are drawn substantially from these earlier Uniform Acts.

The centerpiece of the UFLAA is the protection of vulnerable individuals during the arbitration process. This includes children and victims of domestic violence. For example, unless waived by the parties, the UFLAA requires arbitrators to be trained in detecting domestic violence and child abuse before arbitrating a family law dispute. Should the arbitrator detect abuse, the arbitrator is required to stay the arbitration and refer the dispute to the court. Similarly, if a party is subject to a Protection Order, the dispute will be referred to court for resolution.

Under the Act, an arbitrator may not:

- Grant a divorce, annulment or separate maintenance;
- Terminate parental rights;
- Grant an adoption or guardianship of a child or incapacitated person;
- Determine the existence or non-existence of the parent and child relationship; or
- Determine the status of a child in need of care.

The UFLAA requires close judicial review of arbitration awards determining child-related issues. While an Award regarding property or spousal support is subject to limited judicial review, a child-related award may not be confirmed by a court unless the court finds that the Award complies with applicable statutory law and is in the best interest of the child.

Another unique provision of the UFLAA relates to agreements to arbitrate a dispute that may arise in the future (pre-dispute agreements). Pre-dispute agreements are generally permissible under the UFLAA; however, if parties agree to arbitrate a future child-related dispute, the parties must specifically affirm the agreement to arbitrate at the time of the dispute before proceeding to arbitration

Thus, the UFLAA is an overlay statute meant to work together with the State's existing choice-of-law rules and contractual arbitration law. In Kansas, after 2018, this is the Revised Uniform Arbitration Act (RUAA). It provides a clear, comprehensive framework for arbitration of family law disputes.<sup>1</sup>

### RECOMMENDATION TO THE COMMITTEE

The UFLAA provides enhanced due process protections and procedural safeguards that benefit those seeking to utilize arbitration to confidentially resolve division of asset disputes and utilize experienced family law professionals to provide careful consideration to complex child-related disputes. The Kansas Supreme Court and Kansas Court of Appeals have a well-established history

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<sup>1</sup> This testimony has been summarized from information developed by ULC Legislative Counsel, Kaitlin Wolff. Those seeking additional information from Ms. Wolff are welcome to contact her at 312-450-6615 or [kwolff@uniformlaws.org](mailto:kwolff@uniformlaws.org).

of defining and encouraging the broad enforcement of voluntary arbitration agreements. In addition, federal public policy also favors arbitration of pre-existing disputes. Section 2 of the Federal Arbitration Act provides:

...an agreement in writing to submit to arbitration, an existing controversy arising out of such content shall be valid, irrevocable and enforceable save upon such grounds as exist in the law or at equity for the revocation of any contract. (USC 2).

Similarly, the Supreme Court of the United States has consistently held that courts must compel arbitration when a valid arbitration agreement exists and a motion to compel arbitration is made.

It is the intent of the RUAA drafters to provide each state with an opportunity to provide a uniform and effective means by which family arbitration may be referred to and used throughout the country. The UFLAA ensures predictability and consistency. Some important features of the UFLAA include:

- An efficient alternative to the resolution of family law disputes;
- A means to protect family privacy and confidentiality;
- The seamless integration of family law arbitration into the state's existing contractual arbitration law;
- The protection of the role of the courts with respect to children;
- Protection of victims of domestic violence; and
- An efficient system to address post-decree modifications.

In conclusion, the protections afforded by the UFLAA provide substantial benefits for parents seeking to rely upon arbitration as an effective and confidential means to resolve complex family disputes. I urge the Committee's approval of HB 2553.

Respectfully submitted,

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