

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

*Written Testimony in Support of HB 2496
Before the House Judiciary Committee
Rep. Fred Patton, Chair
January 26, 2022*

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. Throughout my 48 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, Lawrence 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 use of arbitration in family law matters in sister states, 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 organization 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 UFLAA offering a framework for all states to enact arbitration for family law cases. I had the privilege to serve as an American Bar Association Advisor to the drafting committee under the leadership of Barbara Atwood (Arizona) and Professor Linda Elrod (Washburn University School of Law). The Act has generated the support of the American Bar Association. The UFLAA has recently been adopted by four states: Arizona, Hawaii, Montana, and North Dakota.

THE UNIFORM FAMILY LAW ARBITRATION ACT

Arbitration is a private process whereby the parties contract to select an experienced family law arbitrator and resolve a dispute through the arbitration process rather than going to court. During the arbitration, the neutral arbitrator hears arguments from the parties, evaluates evidence, and makes a written 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). The Kansas Legislature passed the Revised Uniform Arbitration Act in 2018. Many sections, especially

the procedural sections, mirror the RUAA. 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 a court for resolution.

Other important provisions under the UFLAA provide that:

- The selection of the neutral arbitrator will be based on reputation, experience and expertise;
- The parties choose the issues to be determined by the arbitrator;
- The parties determine the timing and location of the hearing;
- The parties determine the evidentiary and discovery processes to be utilized;
- The parties decide the confidentiality of the proceeding; and,
- The parties decide the form of the written award.

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.

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.

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.

RECOMMENDATION TO THE COMMITTEE

The UFLAA provides enhanced due process protections and procedural safeguards in arbitration to confidentially resolve division-of-asset disputes and utilizing experienced family law professionals to provide careful consideration in complex child-related disputes. The Kansas Supreme Court and Kansas Court of Appeals have a well-established history 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 [family law] 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;
- The selection of a neutral arbitrator based on reputation, experience and expertise;
- A means to protect family privacy and confidentiality;
- The seamless integration of family law arbitration into the state's existing 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. We urge approval of HB 2496.

Respectfully submitted,

Larry R. Rute
Associates in Dispute Resolution LLC
212 SW 8th Avenue, Suite 207
Topeka, Kansas 66603
785-845-4538