

MEMORANDUM

To: John McCabe
From: James Doty
Date: June 10, 2005
Re: Section 21 of the Uniform Arbitration Act (UAA) Compared in Adopted States

Of the twelve states to adopt a form of the UAA, four have made changes to Section 21 of the act, which is the section dealing with attorney's fees and expenses and punitive damage awards. The states making changes are Colorado, Nevada, North Carolina, and Oklahoma.

In Colorado (§13-22-221(3) (5)), subsections (a) and (c) of Section 21, which granted an arbitrator limited powers to award remedies, were excised and replaced with a provision which states, "unless otherwise provided by law, exemplary damages shall not be awarded in administrative or arbitration proceedings, even if the award or decision is enforced or approved in an action commenced in a court."

In Nevada, the law failed to include subsections which were comparable to Section 21(a) or (e). Section 21(a) granted the arbitrator power to award punitive damages if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award. Section 21(e) of required the arbitrator to state factual and legal justifications for awarding damages or other relief.

In North Carolina (§1-569.21), legislators slightly reworded Section 21(b) which addresses attorney's fees. Section 21(b) states that an arbitrator may award "reasonable attorney's fees and other reasonable expenses of arbitration" if the award is authorized by law. The North Carolina version states an arbitrator may award "reasonable expenses of arbitration" if the award is authorized by law, followed by a provision stating reasonable attorney's fees are to be awarded by an arbitrator only if (1) the arbitration agreement provides for an award of attorney's fees, and (2) an award of attorney's fees is authorized by law in a civil action involving the same claim.

In Oklahoma (§15-810), the entirety of Section 21 was condensed and replaced by a section which reads, "Unless otherwise provided in the agreement to arbitrate, the expenses and fees of the arbitrator, together with other expenses, not including counsel fees incurred in the conduct of the arbitration, shall be paid as provided in the award."