

Memorandum**TO:** ADR Section Members**DATE:** January 9, 2006**FROM:** Jan Frankman, Section Chair
Acting Chair, RUAA Sub-committee**RE RUAA; Bill to be Introduced in 2006 Legislative Session;
Preparation for Section Vote on Sub-committee Recommendation**

After many long months of work and study to review the Revised Uniform Arbitration Act ("RUAA"), the Section Sub-committee recommends support for the version of RUAA which will be introduced for adoption in the 2006 Session of the State Legislature which opens in March. The new law, Chapter 572B would replace the Uniform Arbitration Act, first adopted in Minnesota in 1957; Minn. Stat. §§ 572.08-572.30 would be repealed. The matter will be put to a vote at the February 14, 2006, Section meeting.

RUAA as adopted by the National Conference of Commissioners for Uniform State Laws ("NCCUSL") in 2000, may be found at the NCCUSL website or by link at the ADR Section website. The Bill which will be introduced in March amends RUAA (2000) at Sections 6(b), 10(a) and (d) and Section 29 to meet issues raised by the labor community and the Minnesota Trial Lawyers Association ("MTLA"). The Section 6 and 10 changes apply to arbitrators serving pursuant to collective bargaining agreements. The Section 29 change resolves any conflict which may arise with the No-fault Insurance Law in Minnesota. The three Sections provided by the Revisor's office are attached to this Memo.

The Sub-committee submitted a placemaker Legislative Proposal to the MSBA Legislative Sub-committee which will be amended after the Section has voted on the Sub-committee's proposal to support RUAA (2000) as amended. The Legislative Proposal was submitted following presentation to the Section on RUAA in September, 2005, and direct requests to all other Sections of the MSBA and other organizations interested in RUAA, including MTLA, for comment and discussion. Meetings were held in November and December, 2005, to discuss objections to RUAA. Unfortunately, we had first been advised to consider the version of RUAA introduced as SF665 in 2001. That version of RUAA included provisions with regard to punitive damages and attorneys fees and costs to which the MTLA and the Construction Law Section objected. Both MTLA and Construction Law Section representatives advised the Sub-committee that if the RUAA (2000) language with regard to both topics was introduced, they would have no objection to those provisions. With that change, the Construction Law Section fully supports the Bill. Section 29 addresses the other express objection made by MTLA; it expressly preserves the No-fault Insurance Act.

MTLA has also raised issues concerning contracts of adhesion and, in general, about the arbitration process. RUAA does not speak expressly to contracts of adhesion. The body of case law in Minnesota which is developing will apply to issues which arise in that regard.

We are aware that both the Insurance Federation and the Minnesota Defense Lawyers Association may raise objections to the Bill with regard to the provisions for awards of punitive damages and attorneys fees. While we understand their desire to essentially eliminate the possibility of either category of award, RUAA (2000) codifies case law which clearly supports arbitrator awards of punitive damages and attorneys fees and costs where there is proper basis and support as provided in the Bill. Section 21 of the Bill is attached for your particular review.

The RUAA Sub-committee supports RUAA (2000) as amended, generally, to bring Minnesota in conformance with the growing number of states and jurisdictions which have adopted the law and, specifically, to replace archaic legislation with law that codifies a significant body of State and federal case law reported in the past decade; to address numerous issues frequently raised before, during and after arbitration hearings; to provide helpful procedural framework; and to provide express authority and standards of conduct for arbitrators. The Sub-committee believes RUAA (2000) as amended is good law which will serve the citizens of the State of Minnesota well.

Please direct any question or comment to me by email at frank040@umn.edu. We appreciate your interest and participation in the Section vote in February.

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3.1 (3) unreasonably restrict the right under section 572B.12 to disclosure of any facts
3.2 by a neutral arbitrator; or

3.3 (4) waive the right under section 572B.16 of a party to an agreement to arbitrate
3.4 to be represented by a lawyer at any proceeding or hearing under sections 572B.01
3.5 to 572B.31, except that an employer and a labor organization may waive the right to
3.6 representation by a lawyer in a labor arbitration.

3.7 (c) The parties to an agreement to arbitrate may not waive or vary the requirements
3.8 of this section or section 572B.03, subsection (a)(1) or (b); 572B.07; 572B.14; 572B.18;
3.9 572B.20, subsection (c) or (d); 572B.22; 572B.23; 572B.24; 572B.25, subsection (a) or
3.10 (b); 572B.29; 572B.30; 572B.31; or 572B.32.

3.11 **Sec. 5. [572B.05] APPLICATION TO COURT.**

3.12 (a) Except as otherwise provided in section 572B.28, an application for judicial
3.13 relief under sections 572B.01 to 572B.31 must be made by motion to the court and heard
3.14 in the manner and upon the notice provided by law or rule of court for making and hearing
3.15 motions.

3.16 (b) Notice of an initial motion to the court under sections 572B.01 to 572B.31 must
3.17 be served in the manner provided by law for the service of a summons in a civil action
3.18 unless a civil action is already pending involving the agreement to arbitrate.

3.19 **Sec. 6. [572B.06] VALIDITY OF AGREEMENT TO ARBITRATE.**

3.20 (a) An agreement contained in a record to submit to arbitration any existing or
3.21 subsequent controversy arising between the parties to the agreement is valid, enforceable,
3.22 and irrevocable except upon a ground that exists at law or in equity for the revocation of
3.23 contract.

3.24 (b) The court shall decide whether an agreement to arbitrate exists or a controversy
3.25 is subject to an agreement to arbitrate, except in the case of a grievance arising under a
3.26 collective bargaining agreement when an arbitrator shall decide.

3.27 (c) An arbitrator shall decide whether a condition precedent to arbitrability has been
3.28 fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

3.29 (d) If a party to a judicial proceeding challenges the existence of, or claims that a
3.30 controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may
3.31 continue pending final resolution of the issue by the court, unless the court otherwise
3.32 orders.

3.33 **Sec. 7. [572B.07] MOTION TO COMPEL OR STAY ARBITRATION.**

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5.1 is appointed and is authorized and able to act, a party to an arbitration proceeding may
 5.2 move the court for a provisional remedy only if the matter is urgent and the arbitrator is
 5.3 not able to act in a timely manner or if the arbitrator cannot provide an adequate remedy.

5.4 (c) A motion to a court for a provisional remedy under subsection (a) or (b) does
 5.5 not waive any right of arbitration.

5.6 **Sec. 9. [572B.09] INITIATION OF ARBITRATION.**

5.7 (a) A person initiates an arbitration proceeding by giving notice in a record to the
 5.8 other parties to the agreement to arbitrate in the agreed manner between the parties or,
 5.9 in the absence of agreement, by mail certified or registered, return receipt requested and
 5.10 obtained, or by service as authorized for the initiation of a civil action. The notice must
 5.11 describe the nature of the controversy and the remedy sought.

5.12 (b) Unless a person interposes an objection as to lack or insufficiency of notice
 5.13 under section 572B.15, subsection (c), not later than the commencement of the arbitration
 5.14 hearing, the person's appearance at the hearing waives any objection to lack of or
 5.15 insufficiency of notice.

5.16 **Sec. 10. [572B.10] CONSOLIDATION OF SEPARATE ARBITRATION**
 5.17 **PROCEEDINGS.**

5.18 (a) Except as otherwise provided in subsections (c) and (d), upon motion of a
 5.19 party to an agreement to arbitrate or to an arbitration proceeding, the court may order
 5.20 consolidation of separate arbitration proceedings as to all or some of the claims if:

5.21 (1) there are separate agreements to arbitrate or separate arbitration proceedings
 5.22 between the same persons or one of them is a party to a separate agreement to arbitrate
 5.23 or a separate arbitration proceeding with a third person;

5.24 (2) the claims subject to the agreements to arbitrate arise in substantial part from the
 5.25 same transaction or series of related transactions;

5.26 (3) the existence of a common issue of law or fact creates the possibility of
 5.27 conflicting decisions in the separate arbitration proceedings; and

5.28 (4) prejudice resulting from a failure to consolidate is not outweighed by the risk of
 5.29 undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

5.30 (b) The court may order consolidation of separate arbitration proceedings as to
 5.31 certain claims and allow other claims to be resolved in separate arbitration proceedings.

5.32 (c) The court may not order consolidation of the claims of a party to an agreement
 5.33 to arbitrate which prohibits consolidation.

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6.1 (d) An arbitrator shall decide whether to consolidate one or more grievances arising
 6.2 under a collective bargaining agreement.

6.3 **Sec. 11. [572B.11] APPOINTMENT OF ARBITRATOR; SERVICE AS A**
 6.4 **NEUTRAL ARBITRATOR.**

6.5 (a) If the parties to an agreement to arbitrate agree on a method for appointing an
 6.6 arbitrator, that method must be followed, unless the method fails. If the parties have
 6.7 not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is
 6.8 unable to act and a successor has not been appointed, the court, on motion of a party
 6.9 to the arbitration proceeding, shall appoint the arbitrator. The arbitrator so appointed
 6.10 has all the powers of an arbitrator designated in the agreement to arbitrate or appointed
 6.11 pursuant to the agreed method.

6.12 (b) An arbitrator who has a known, direct, and material interest in the outcome of the
 6.13 arbitration proceeding or a known, existing, and substantial relationship with a party may
 6.14 not serve as a neutral arbitrator.

6.15 **Sec. 12. [572B.12] DISCLOSURE BY ARBITRATOR.**

6.16 (a) Before accepting appointment, an individual who is requested to serve as an
 6.17 arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement
 6.18 to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a
 6.19 reasonable person would consider likely to affect the impartiality of the arbitrator in the
 6.20 arbitration proceeding, including:

6.21 (1) a financial or personal interest in the outcome of the arbitration proceeding; and
 6.22 (2) an existing or past relationship with any of the parties to the agreement to
 6.23 arbitrate or the arbitration proceeding, their counsel or representatives, witnesses, or
 6.24 the other arbitrators.

6.25 (b) An arbitrator has a continuing obligation to disclose to all parties to the
 6.26 agreement to arbitrate and arbitration proceedings and to any other arbitrators any facts
 6.27 that the arbitrator learns after accepting appointment which a reasonable person would
 6.28 consider likely to affect the impartiality of the arbitrator.

6.29 (c) If an arbitrator discloses a fact required by subsection (a) or (b) to be disclosed
 6.30 and a party timely objects to the appointment or continued service of the arbitrator based
 6.31 upon the disclosure, the objection may be a ground to vacate the award under section
 6.32 572B.23, subsection (a)(2).

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14.1 (c) On application of a prevailing party to a contested judicial proceeding under
 14.2 section 572B.22, 572B.23, or 572B.24, the court may add to a judgment confirming,
 14.3 vacating without directing a rehearing, modifying, or correcting an award, attorney fees
 14.4 and other reasonable expenses of litigation incurred in a judicial proceeding after the
 14.5 award is made.

14.6 **Sec. 26. [572B.26] JURISDICTION.**

14.7 (a) A court of this state having jurisdiction over the dispute and the parties may
 14.8 enforce an agreement to arbitrate.

14.9 (b) An agreement to arbitrate providing for arbitration in this state confers exclusive
 14.10 jurisdiction on the court to enter judgment on an award under sections 572B.01 to 572B.31.

14.11 **Sec. 27. [572B.27] VENUE.**

14.12 A motion pursuant to section 572B.05 must be filed in the court of the county in
 14.13 which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the
 14.14 hearing has been held, in the court of the county in which it was held. Otherwise, the
 14.15 motion must be filed in any county in which an adverse party resides or has a place of
 14.16 business or, if no adverse party has a residence or place of business in this state, in the
 14.17 court of any county in this state. All subsequent motions must be filed in the court hearing
 14.18 the initial motion unless the court otherwise directs.

14.19 **Sec. 28. [572B.28] APPEALS.**

- 14.20 (a) An appeal may be taken from:
 14.21 (1) an order denying a motion to compel arbitration;
 14.22 (2) an order granting a motion to stay arbitration;
 14.23 (3) an order confirming or denying confirmation of an award;
 14.24 (4) an order modifying or correcting an award;
 14.25 (5) an order vacating an award without directing a rehearing; or
 14.26 (6) a final judgment entered pursuant to sections 572B.01 to 572B.31.
 14.27 (b) An appeal under this section must be taken as from an order or a judgment in
 14.28 a civil action.

14.29 **Sec. 29. [572B.29] UNIFORMITY OF APPLICATION AND CONSTRUCTION;**
 14.30 **NO-FAULT AUTOMOBILE INSURANCE ACT; CONFLICT PREVAILING LAW.**

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15.1 (a) In applying and construing this uniform act, consideration must be given to the
15.2 need to promote uniformity of the law with respect to its subject matter among states
15.3 that enact it.

15.4 (b) When provisions of sections 572B.01 to 572B.31 are in conflict with provisions
15.5 of sections 65B.41 to 65B.71, the provisions of sections 65B.41 to 65B.71 shall prevail.

15.6 **Sec. 30. [572B.30] SAVINGS CLAUSE.**

15.7 Sections 572B.01 to 572B.31 do not affect an action or proceeding commenced or
15.8 right accrued before sections 572B.01 to 572B.31 take effect.

15.9 **Sec. 31. [572B.31] RELATIONSHIP TO ELECTRONIC SIGNATURES IN**
15.10 **GLOBAL AND NATIONAL COMMERCE ACT.**

15.11 The provisions of sections 572B.01 to 572B.31 governing the legal effect, validity,
15.12 and enforceability of electronic records or electronic signatures, and of contracts
15.13 performed with the use of such records or signatures conform to the requirements of
15.14 section 102 of the Electronic Signatures in Global and National Commerce Act.

15.15 **Sec. 32. REPEALER.**

15.16 Minnesota Statutes 2004, sections 572.08; 572.09; 572.10; 572.11; 572.12; 572.13;
15.17 572.14; 572.15; 572.16; 572.17; 572.18; 572.19; 572.20; 572.21; 572.22; 572.23; 572.24;
15.18 572.25; 572.26; 572.27; 572.28; 572.29; and 572.30, are repealed.

15.19 **Sec. 33. EFFECTIVE DATE.**

15.20 Sections 1 to 32 are effective August 1, 2006.

15.21 **ARTICLE 2**

15.22 **CONFORMING AMENDMENTS**

15.23 **Section 1. Minnesota Statutes 2004, section 80C.146, subdivision 2, is amended to read:**

15.24 **Subd. 2. Building alterations. (a) A motor fuel franchise agreement entered into or**
15.25 **renewed, extended, or modified, after April 27, 1988, must comply with this subdivision**
15.26 **if it allows the franchisor to modify, remodel, or alter a full-service station operated by**
15.27 **a franchisee by eliminating one or more service bays. The agreement must provide that**
15.28 **if the motor fuel franchisor eliminates one or more service bays during the term of the**
15.29 **agreement, the franchisor must first pay to the franchisee in cash an amount that fairly and**
15.30 **adequately compensates the franchisee for the loss of the service and repair business. The**
15.31 **amount of compensation must be determined without regard to:**

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- 11.1 (2) because the arbitrator has not made a final and definite award upon a claim
 11.2 submitted by the parties to the arbitration proceeding; or
 11.3 (3) to clarify the award.
 11.4 (b) A motion under subsection (a) must be made and served on all parties within 20
 11.5 days after the movant receives notice of the award.
 11.6 (c) A party to the arbitration proceeding must serve any objections to the motion
 11.7 within ten days after receipt of the notice.
 11.8 (d) If a motion to the court is pending under sections 572B.22, 572B.23, and
 11.9 572B.24, the court may submit the claim to the arbitrator to consider whether to modify or
 11.10 correct the award:
 11.11 (1) upon the grounds stated in section 572B.24, subsection (a)(1) or (3);
 11.12 (2) because the arbitrator has not made a final and definite award upon a claim
 11.13 submitted by the parties to the arbitration proceeding; or
 11.14 (3) to clarify the award.
 11.15 (e) An award modified or corrected pursuant to this section is subject to sections
 11.16 572B.22, 572B.23, and 572B.24.

11.17 **Sec. 21. ~~572B.24~~ REMEDIES; FEES AND EXPENSES OF ARBITRATION**
 11.18 **PROCEEDING.**

- 11.19 (a) An arbitrator may award punitive damages or other exemplary relief if such an
 11.20 award is authorized by law in a civil action involving the same claim and the evidence
 11.21 produced at the hearing justifies the award under the legal standards otherwise applicable
 11.22 to the claim.
 11.23 (b) An arbitrator may award attorney fees and other reasonable expenses of
 11.24 arbitration if such an award is authorized by law in a civil action involving the same claim
 11.25 or by the agreement of the parties to the arbitration proceeding.
 11.26 (c) As to all remedies other than those authorized by subsections (a) and (b), an
 11.27 arbitrator may order such remedies as the arbitrator considers just and appropriate under
 11.28 the circumstances of the arbitration proceeding. The fact that such a remedy could not or
 11.29 would not be granted by the court is not a ground for refusing to confirm an award under
 11.30 section 572B.22 or for vacating an award under section 572B.23.
 11.31 (d) An arbitrator's expenses and fees, together with other expenses, must be paid
 11.32 as provided in the award.
 11.33 (e) If an arbitrator awards punitive damages or other exemplary relief under
 11.34 subsection (a), the arbitrator shall specify in the award the basis in fact justifying and the

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12.1 basis in law authorizing the award and state separately the amount of the punitive damages
12.2 or other exemplary relief.

12.3 **Sec. 22. [572B.22] CONFIRMATION OF AWARD.**

12.4 After a party to the arbitration proceeding receives notice of an award, the party may
12.5 file a motion with the court for an order confirming the award, at which time the court
12.6 shall issue such an order unless the award is modified or corrected pursuant to section
12.7 572B.20 or 572B.24 or is vacated pursuant to section 572B.23.

12.8 **Sec. 23. [572B.23] VACATING AWARD.**

12.9 (a) Upon motion of a party to the arbitration proceeding, the court shall vacate an
12.10 award if:

12.11 (1) the award was procured by corruption, fraud, or other undue means;

12.12 (2) there was:

12.13 (A) evident partiality by an arbitrator appointed as a neutral;

12.14 (B) corruption by an arbitrator; or

12.15 (C) misconduct by an arbitrator prejudicing the rights of a party to the arbitration
12.16 proceeding;

12.17 (3) an arbitrator refused to postpone the hearing upon showing of sufficient cause
12.18 for postponement, refused to consider evidence material to the controversy, or otherwise
12.19 conducted the hearing contrary to section 572B.15, so as to prejudice substantially the
12.20 rights of a party to the arbitration proceeding;

12.21 (4) an arbitrator exceeded the arbitrator's powers;

12.22 (5) there was no agreement to arbitrate, unless the person participated in the
12.23 arbitration proceeding without raising the objection under section 572B.15, subsection (c),
12.24 not later than the commencement of the arbitration hearing; or

12.25 (6) the arbitration was conducted without proper notice of the initiation of an
12.26 arbitration as required in section 572B.09 so as to prejudice substantially the rights of a
12.27 party to the arbitration proceeding.

12.28 (b) A motion under this section must be filed within 90 days after the movant
12.29 receives notice of the award in a record pursuant to section 572B.19 or within 90 days
12.30 after the movant receives notice of an arbitrator's award in a record on a motion to modify
12.31 or correct an award pursuant to section 572B.20, unless the motion is predicated upon the
12.32 ground that the award was procured by corruption, fraud, or other undue means, in which
12.33 case it must be filed within 90 days after such a ground is known or by the exercise of
12.34 reasonable care should have been known by the movant.