

The Revised Uniform Arbitration Act*

I. INTRODUCTION

In 1955, the National Conference of Commissioners on Uniform State Laws (NCCUSL) began working on a model act for states to follow in order to promote arbitration as both a viable and desirable alternative to litigation. The result of NCCUSL's efforts, the Uniform Arbitration Act of 1956 (UAA), was tremendously successful as it garnered full passage in thirty-four states and the District of Columbia and provided the model for arbitration acts in fourteen other states.¹ While the UAA did address issues such as enforcement of arbitration agreements, appointment of arbitrators, and review of arbitration awards, its coverage was general in nature. With the increase in use and complexity of arbitration processes, the UAA became viewed as an antiquated legal tool.² Simply stated, the UAA failed to answer numerous questions that had become commonplace in contemporary arbitration.³

Therefore, in 1995, NCCUSL began studying the feasibility of revising the UAA. By May 1997, it had commenced the first of eight committee meetings of legal practitioners, legal academics, and representatives from industries affected by arbitration, who together intended to draft a more comprehensive uniform act.⁴ Three years of work by the drafters resulted in

* The full text of the Revised Uniform Arbitration Act is available at: <http://www.law.upenn.edu/bll/ulc/uarba/arbitrat1213.htm> (last visited Oct. 3, 2002).

¹ Sarah Rudolph Cole, *The Revised Uniform Arbitration Act: Is It the Wrong Cure?*, DISP. RESOL. MAG., Summer 2002, at 10; Joseph Colagiovanni & Thomas Hartmann, *Enforcing Arbitration Awards* n.1, 'Lectric Law Library, at <http://www.lectlaw.com/files/adr15.htm> (last visited Oct. 3, 2002).

² See National Conference of Commissioners on Uniform State Laws, *Revised Uniform Arbitration Act Receiving Widespread Support, Endorsed by American Bar Association*, at <http://www.nccusl.org/nccusl/pressreleases/pr2-22-01-1.asp> (Feb. 22, 2001).

³ Stephen L. Hayford & Alan R. Palmiter, *Arbitration Federalism: A State Role in Commercial Arbitration*, 54 FLA. L. REV. 175, 209–10 (2002) (raising a litany of specific issues that were not addressed by the original UAA, such as whether overlapping arbitration proceedings can or must be consolidated, whether arbitrators can be required to testify in other proceedings, and whether parties can contract for expanded court review for errors of law by arbitrators).

⁴ Cole, *supra* note 1, at 10–11.

the Revised Uniform Arbitration Act (RUAA), which was officially approved by NCCUSL in August 2000.⁵

Shortly thereafter, the American Arbitration Association, the National Arbitration Forum, seven separate sections of the American Bar Association, and a number of other organizations publicly endorsed the RUAA.⁶ More importantly, multiple state legislatures began to explore and debate passage of the RUAA as law to replace statutory language either taken from or inspired by the UAA. In April 2001, the drafters' labor was rewarded when New Mexico became the first state to officially adopt the language of the RUAA as law.⁷

II. THE INTENTIONS OF THE RUAA

According to the RUAA Drafting Committee, three main goals existed in the promulgation of this uniform act. First, the committee wanted to encourage party autonomy by making most of the act a default mechanism only applicable in areas where the parties' own agreement was silent or violated notions of fundamental fairness. Second, the committee wanted to provide a model for arbitration that was increasingly efficient, streamlined, and thus, more attractive to parties. Finally, the committee wanted to recognize the contractual nature of arbitration by limiting the grounds on which a court may review an arbitrator's award.⁸

Specifically, the committee sought to modernize this act by adding provisions addressing, among other topics, electronic communication, consolidation of arbitration proceedings, disclosure of conflicts of interest by arbitrators, non-monetary remedies, vacatur of arbitration awards, attorney's

⁵ See National Conference of Commissioners on Uniform State Laws, *Uniform Arbitration Act Revised*, at <http://www.nccusl.org/nccusl/pressreleases/pr8-3-00-6.asp> (Aug. 3, 2000).

⁶ National Conference of Commissioners on Uniform State Laws, *supra* note 2. According to the press release, other organizations that publicly supported the RUAA were the National Academy of Arbitrators, JAMS/Endispute, the Dispute Resolution Committee of the Association of the Bar of the City of New York, and the American College of Real Estate Lawyers.

⁷ Justin Kelly, *New Mexico First to Adopt Revised Uniform Arbitration Act*, ADRWorld.com, at <http://www.adrworld.com> (Apr. 6, 2001).

⁸ Timothy J. Heinsz, *The Revised Uniform Arbitration Act: Modernizing, Revising, and Clarifying Arbitration Law*, 2001 J. DISP. RESOL. 1, 3. Professor Heinsz was Reporter to the Drafting Committee to Revise the Uniform Arbitration Act.

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fees, punitive damages, discovery, jurisdiction, arbitral immunity, and the use of arbitration agreements in adhesion contracts.⁹

III. THE EFFECTS OF THE RUAA

Being a relatively recent creation, the RUAA is currently the subject of significant debate among legal practitioners and academicians. Those who appreciate the RUAA as drafted argue that it effectively brings the original UAA into the arena of contemporary arbitration and that it offers arbitrating parties greater options and protections than previously afforded.¹⁰ Critics of the uniform act suggest that while its intentions are noble and a number of its provisions a step forward, the RUAA, most notably, does not go far enough to specifically address the interests of both repeat and one-time arbitrating parties,¹¹ is too weak in its handling of arbitration agreements in adhesion contracts, and is continuously at the mercy of federal preemption.¹²

A. Arguments Supportive of the RUAA

Multiple observers have, at the least, agreed that the RUAA is a positive initiative in that it provides much more specific and detailed direction than the original UAA in handling arbitration questions and problems arising at

⁹ *Id.* at 9–53; Cole, *supra* note 1, at 11. The specific sections of the RUAA that deal with the topics listed are the following: electronic communication (section 1, defining “record” as information that can be stored in an electronic medium); the use of arbitration agreements in adhesion contracts (sections 4 and 6); non-monetary remedies (section 8 on provisional remedies and section 21 on final remedies); consolidation of arbitration proceedings (section 10); disclosure of conflicts of interest by arbitrators (section 12); arbitral immunity (section 14); discovery (section 17); punitive damages (section 21); vacatur of arbitration awards (section 23); attorney’s fees (section 25); and jurisdiction (section 26). See Heinsz, *supra* note 8, at 54–66.

¹⁰ See Heinsz, *supra* note 8, at 52; Justin Kelly, *ABA House of Delegates Adopts Revised Uniform Arbitration Act*, ADRWorld.com, at <http://www.adrworld.com> (Feb. 23, 2001) (quoting a key member of the American Bar Association’s (ABA) House of Delegates as stating that the ABA will use its “enormous moral authority” and “imprimatur” to gain passage of the RUAA in as many states as possible).

¹¹ See Sarah Rudolph Cole, *Uniform Arbitration: “One Size Fits All” Does Not Fit*, 16 OHIO ST. J. ON DISP. RESOL. 759, 779–80 (2001).

¹² Heinsz, *supra* note 8, at 3–8; see generally Cole, *supra* note 1; Stephen L. Hayford, *Federal Preemption and Vacatur: The Bookend Issues under the Revised Uniform Arbitration Act*, 2001 J. DISP. RESOL. 67.

the state level.¹³ Among the most praised sections of this uniform act seem to be those allowing arbitrators to grant interim relief to parties and award attorney's fees, as well as the provisions on arbitrator immunity, arbitrator disclosure, discovery, and consolidation.¹⁴

The reasoning behind support for these provisions lies with both the apparent flexibility in which they allow arbitrators to develop appropriate remedies for particular situations and the protection that they afford parties from arbitral abuse. For instance, if circumstances surrounding an arbitration seem particularly sensitive and confidentiality is deemed important to the proceedings, the RUAA gives an arbitrator, like a judge, the express ability to issue protective orders to ensure procedural fairness.¹⁵ Likewise, this revised uniform act, unlike its predecessor, gives arbitrators the freedom to award fees for legal counsel and other reasonable expenses even if the parties do not explicitly grant the arbitrator such ability.¹⁶

Parties, in turn, are insulated from systemic abuse by the provisions on arbitrator disclosure and consolidation. The disclosure section requires arbitrators to reveal all potential conflicts of interest stemming from their own personal affairs, whether in the present or past, in order to avoid judicial challenges by disgruntled parties on grounds of evident partiality or impropriety.¹⁷

The consolidation provision, subject to waiver by the parties, allows courts, not arbitrators, to join together separate arbitral proceedings relating to similar transactions, common parties, or common issues of law or fact.¹⁸

¹³ See Samuel Estreicher & Kenneth J. Turnbull, *Revised Uniform Arbitration Act Approved*, N.Y.L.J., Nov. 2, 2000, at 3, 6 (noting that the RUAA is, on the whole, a "worthy and overdue effort to modernize our arbitration laws"); Hayford, *supra* note 12, at 87-88 (summarizing the issues addressed by the RUAA and predicting that the act "will provide the states with a template for bringing the legal framework for arbitration into the twenty-first century . . ."); Cole, *supra* note 1, at 13 (opining that "the RUAA, particularly in its outstanding commentary, updates and modernizes arbitration . . .").

¹⁴ See Kelly, *supra* note 10; *Expected Impact of New Legislation on State Arbitration Regimes - Holland & Knight LLP* (Dec. 7, 2001), ALL REGIONS, available at LEXIS, News Group File, Most Recent Two Years; for corresponding RUAA sections to these provisions, see *supra* text accompanying note 9.

¹⁵ Heinsz, *supra* note 8, at 21, 57; *Expected Impact of New Legislation on State Arbitration Regimes - Holland & Knight LLP*, *supra* note 14.

¹⁶ Heinsz, *supra* note 8, at 23, 63.

¹⁷ *Id.* at 17-20, 58-59; see James H. Carter, *US Takes Steps to Promote Arbitrator Ethics*, INT'L FIN. L. REV., Mar. 1, 2002, available at WESTLAW, 2002 WL 1493825 (opining that the RUAA, by requiring arbitrators to disclose their affiliations and interests, takes positive steps to further arbitrator neutrality).

¹⁸ Heinsz, *supra* note 8, at 11-16, 58.

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This new section of the RUAA is intended to encourage arbitral efficiency and avoid inconsistent determinations.¹⁹

B. *Arguments Critical of the RUAA*

For all of the benefits that this revised uniform act seems to present, there is suspicion among many observers that the RUAA's provisions do not fully address the needs and problems of contemporary arbitration. While some legal scholars simply remind state legislatures that they should carefully scrutinize each of the act's various parts before adopting it in full,²⁰ others suggest that the drafters were too conservative in their approach and fell short of creating a model statute appreciably better than the UAA. Among such criticisms is that the RUAA is likely to be onerous to parties that arbitrate often, be insufficient protection for those parties that arbitrate rarely, and be ineffective both substantively and procedurally unless embraced enough that it encourages reform at the federal level.²¹

1. *Distinction Between Repeat and One-Time Arbitrating Parties*

At least one legal scholar has opined that in spite of its goals to be more sensitive to arbitrating parties than its predecessor, the RUAA is deficient in meeting such goals because it fails to address the needs of both repeat and

¹⁹ See *id.* at 13–15.

²⁰ Estreicher & Turnbull, *supra* note 13, at 5–6. The authors explain that certain provisions of the RUAA, such as the provisions regarding arbitrator disclosure and vacatur of awards, might be seen as undesirable by state legislatures. Specifically, they note that section 12(e) of the RUAA states that when an arbitrator appointed as a neutral actor fails to disclose a “known, direct, and material interest in the outcome of the arbitration proceeding” or a “known, existing, and substantial relationship with a party,” the arbitrator is presumed to act with evident partiality, and grounds exist for a court to vacate an arbitrator’s decision. *Id.* at 2–6; see Heinsz, *supra* note 8, at 59, 63. Estreicher and Turnbull suggest that such a provision is dangerous because it opens the door too wide for losing parties to appeal an arbitrator’s decision in a court of law and, thus, undermines the desired finality of awards. Likewise, the authors state that since section 4(c) prohibits parties from altering the delineated grounds for vacating arbitral awards, the RUAA presents an “improper and unnecessary interference with the parties’ right to contract.” Estreicher & Turnbull, *supra* note 13, at 5.

²¹ See Cole, *supra* note 11, at 777–80; Cole, *supra* note 1, at 12–13. *But see* Hayford, *supra* note 12, at 84–88 (arguing that while federal preemption is a threat to state regulation of arbitration processes, the RUAA was drafted carefully enough that, in the greater number of circumstances, the act stands on its own as a progressive work out of the reach of federal preemption).

one-time players in arbitration.²² Namely, the act contains multiple provisions that cannot be waived by either of the parties until a dispute arises,²³ or that cannot be waived at all during the arbitral process.²⁴ To repeat players, or those parties who arbitrate often, the argument is that these fixed provisions, especially those concerning extensive discovery, should be open to waiver so that familiar processes are not threatened by allowing experienced parties the option to burden arbitral proceedings.²⁵

Conversely, to one-time players, or those parties that rarely arbitrate, the argument is that while some of the fixed provisions make sense, such as those ensuring the right of representation at an arbitral proceeding, they offer too little protection from the primary concern of such parties, namely that the pre-dispute arbitration agreements they sign do not provide them an adequate forum in which to vindicate their statutory rights.²⁶ The specific concern for one-time players, such as individual consumers and employees, is that notwithstanding the RUAA's protections, it is still possible in some states to waive statutory rights to obtain punitive damages, participate in class actions, and seek effective judicial review of arbitration decisions.²⁷

²² See generally Cole, *supra* note 11, at 777–80.

²³ *Id.* Among the provisions that cannot be waived by the parties until a dispute arises are (1) the right to representation by an attorney at an arbitral proceeding (section 4(b)(4)), (2) the right to move the arbitrator to award provisional remedies and interim awards (section 8), and (3) the right to move the arbitrator to issue subpoenas for witnesses and records or to order depositions (sections 17(a) and (b)). *Id.* at 778.

²⁴ *Id.* Among the provisions that cannot be waived by the parties at any point of the arbitral process, as described in section 4(c), are (1) the right to move the court to confirm, vacate, or modify an arbitral award or to compel or stay arbitration, (2) the power of the court to award reasonable costs for motions and subsequent judicial proceedings, and (3) the arbitrator's immunity from testifying in subsequent judicial proceedings. *Id.*

²⁵ *Id.* at 778–79.

²⁶ Cole, *supra* note 1, at 12.

²⁷ *Id.* In the footnotes to her unpublished article, Professor Cole explains that legal loopholes potentially exist in the RUAA in which unwitting parties can waive their statutory rights to relief. For example, on the issue of effective judicial review of an arbitration decision, a party is not protected from waiving its right to review of an award for manifest disregard of the law despite section 4 of the RUAA, which prohibits parties from waiving the statutory grounds for vacatur. Professor Cole adds that manifest disregard of the law is often a reason that federal appellate courts are willing to review cases challenging arbitral awards. *Id.* at n.13 (citing Stephen L. Hayford, *A New Paradigm for Commercial Arbitration: Rethinking the Relationship Between Reasoned Awards and the Judicial Standards for Vacatur*, 66 GEO. WASH. L. REV. 443, 445–51 (1998)).

2. *Adhesion Contracts in Arbitration Agreements*

Among the most articulated of the concerns practitioners and academicians have expressed regarding the RUAA is that it does not do enough to protect vulnerable parties, such as standard consumers, from adhesion contracts and, specifically, those adhesion contracts that are unconscionable.²⁸ Indeed, the drafters themselves held concerns of unconscionability in adhesion contracts as they worked on formulating a final version of the revised act.²⁹ Correspondence among the drafters reveals that four options were under consideration for how the act should address such issues, ranging from the drafting of specific language in each section of the RUAA touching on adhesion situations, to a single discussion of how various industry protocols react with due process concerns in the employment relations context.³⁰

In the end, the drafters decided on an option by which the inequities of adhesion contracts were to be discussed in the auxiliary notes to the act, but where state substantive law would be left free to react to claims of

²⁸ See Cole, *supra* note 1, at 11; Heinsz, *supra* note 8, at 6–8; see Memorandum from Dean Timothy Heinsz, Reporter to the Drafting Committee to Revise the Uniform Arbitration Act, to the Drafting Committee 1, available at <http://www.law.upenn.edu/bll/ulc/uarba/he-kad1.htm> (Mar. 19, 1998). Heinsz notes that, among other factors, courts look at the following when considering unconscionability of an arbitration agreement:

[U]nequal bargaining power, the conspicuousness of the arbitration clause, whether the weaker party has the option to opt out of arbitration, clarity of the term, whether an unfair advantage [is] obtained, whether the term is negotiable, whether the term is boilerplate, whether the aggrieved party had a “meaningful” choice or was compelled to accept, whether the arbitration agreement is within the reasonable expectations of [the] weaker party, and whether the stronger party used any deceptive tactics.

Id.

²⁹ See Cole, *supra* note 1, at 11.

³⁰ *Id.* The text of the four options noted by Professor Heinsz in his memorandum are the following: (a) add specific language in each section of the RUAA that might touch on adhesion situations, (b) have the RUAA cover only commercial agreements and propose that NCCUSL have separate acts for situations likely to involve unequal bargaining power, such as consumer, employment, franchises, etc., (c) discuss the special problems of adhesion contracts in the arbitration setting in the Prefatory Note and/or Reporter Comments but leave to developing state (and federal) substantive law the applicable doctrines for contracts of adhesion and unconscionability, and (d) discuss the use of industry protocols similar to the due process protocol for mediation and arbitration of statutory disputes arising out of the employment relationship. *Id.* See also Heinsz, *supra* note 8, at 6–8.

unconscionability and to develop individual schemes to handle such claims.³¹ Thus, given an opportunity to take a bolder stance denouncing boilerplate arbitration agreements that force weaker parties to accept terms on a take-it-or-leave-it basis, the drafters chose a road that clarified their views but did not expressly advocate state prohibition of certain adhesion arrangements.

While supporters of the drafters' ultimate decision note that the multiple non-waivable provisions of the RUAA encourage arbitration arrangements that are not unconscionable,³² critics of the drafters' action see their benign stance as an opportunity lost in the battle for fundamental fairness in arbitration.³³ Both sides, however, agree that the main problem underlying the question of how to handle adhesion situations in the RUAA is the reality of federal preemption.

3. Federal Preemption

As in other areas of law, arbitration at the state level is always subject to supercession by federal law if the proceedings concern any aspect of a transaction or arrangement affecting interstate commerce. Since 1925, the Federal Arbitration Act (FAA) has been the mechanism by which courts have applied law to arbitration agreements falling within federal jurisdiction.³⁴ Over those seventy-seven years, federal judges have, by and large, developed a pro-arbitration stance when it comes to claims challenging the validity of arbitration agreements,³⁵ and have interpreted the FAA as being a tool

³¹ Cole, *supra* note 1, at 11; Heinsz, *supra* note 8, at 7.

³² Heinsz, *supra* note 8, at 8. Professor Heinsz emphasizes that section 4 of the RUAA requires a party, before a dispute arises, to waive the right to representation by an attorney at an arbitration proceeding. Such a provision, according to Professor Heinsz, places specific limits on a party's ability to unreasonably restrict notice of the initiation of an arbitration proceeding, to unreasonably prevent disclosure by a neutral arbitrator, to limit an arbitrator's subpoena power, or to prevent applications to a court to aid the arbitration process. *Id.* In short, such an argument supports the view that the drafters did indeed take proactive measures to encourage fair and equitable arbitration arrangements.

³³ Cole, *supra* note 1, at 11. Professor Cole states that "[u]ndoubtedly, many of the drafters found [the RUAA's handling of adhesion situations] unsatisfactory because it failed to address by statute concerns about adhesive arbitration agreements." *Id.* One of the solutions offered by Professor Cole to strengthen the RUAA is for a reworked version to explicitly recognize the importance of unconscionability and adhesion contract issues in the arena of federal preemption so that pressure can be created to encourage change in the "unworkable federal law of arbitration." *Id.*

³⁴ See Hayford & Palmiter, *supra* note 3, at 176.

³⁵ *Id.* at 186-89. In their article, Professors Hayford and Palmiter chronicle the development of the United States Supreme Court's jurisprudence relating to the

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intended to enforce such agreements notwithstanding concerns of coercion and unfairness.³⁶

In recent years, the Supreme Court of the United States has recognized the positive effects of state law on arbitration arrangements concerning interstate commerce to the extent that such laws do not oppose the FAA's pro-arbitration policies.³⁷ Practically, this means that state law will be preempted by operation of the FAA if such law "[singles] out arbitration provisions for suspect status"³⁸ and does not address issues such as adhesion contracts and unconscionability in a merely general fashion.³⁹

interaction of state law and federal law in federal diversity cases. The authors note that while the famous case of *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), curbed the power of federal courts to create "federal common law" and assumedly left the states free to develop means to handle issues such as arbitration, the Court, by the middle 1960s, was much less willing to accept the power of state law and its normally "outcome-determinative" approach. Hayford & Palmiter, *supra* note 3, at 186–88. Specifically, *Hanna v. Plumer*, 380 U.S. 460 (1965), abandoned an outcome-determinative approach in diversity cases, ruling that federal policy would trump state law even if the federal policy determined the outcome. This rule directly addressed arbitration in *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967), where the Court ruled that FAA standards alone governed the validity of commercial arbitration clauses in federal diversity cases. Hayford & Palmiter, *supra* note 3, at 188.

³⁶ *Id.* at 180. The authors note that the FAA "grew out of a business-led reform movement in the 1920s to overcome the longstanding judicial hostility to the enforcement of pre-dispute agreements to arbitrate," and that the act's "quick read" nature places an unmistakable emphasis on judicial respect for commercial arbitration at the beginnings and ends of the arbitral process. *Id.*

³⁷ See *Doctor's Assocs. v. Casarotto*, 517 U.S. 681, 687 (1996); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 281 (1995); *Perry v. Thomas*, 482 U.S. 483, 492 (1987) (noting the basic policy the Supreme Court has adopted is that courts, state or federal, may not "in assessing the rights of litigants to enforce an arbitration agreement, construe that agreement in a manner different from that in which it otherwise construes nonarbitration agreements under state law").

³⁸ *Doctor's Assocs.*, 517 U.S. at 687.

³⁹ See Hayford, *supra* note 12, at 73–76. Professor Hayford explains that the issue of federal preemption can be thought of in terms of a continuum ranging from "front end" issues, which are most susceptible to preemption, to contract formation issues, which are practically immune from the influence of federal law. These front-end issues are concerned with "enforcement of the agreement to arbitrate, determinations of substantive arbitrability, and any of the other questions raised when a party attempts to evade an otherwise valid arbitration contract." *Id.* at 74. The other category of issues Hayford notes as being particularly vulnerable to preemption includes so-called "back end" issues, which include "vacatur, confirmation, and modification of arbitral awards." *Id.* In essence, if a particular state law addresses unconscionability in terms of matters germane to agreements to arbitrate or results of arbitration processes, Hayford suggests that the

While some observers see federal preemption as unlikely to occur with the RUAA unless adopting states are inspired to enact law making arbitration processes difficult,⁴⁰ others recognize the RUAA as a work that, in being carefully crafted so as not to speak too loudly against the FAA and risk possible preemption, sacrifices its own goals out of fear.⁴¹ The key question underlying such an analysis asks how often federal courts will find the revised act's provisions inconsistent with the FAA. While time will tell if the RUAA is ultimately harmed by the prospect of federal preemption, the debate continues as to how states should adopt the RUAA to handle this troublesome issue.⁴²

IV. STATE ADOPTION OF THE RUAA

Since receiving final approval from NCCUSL in August 2000, the RUAA has to date been successfully passed into law in four states: New Mexico (April 2001),⁴³ Nevada (May 2001),⁴⁴ Hawaii (June 2001),⁴⁵ and

danger of preemption is high and application of the arguably anachronistic FAA likely. *See id.* at 75, 80.

⁴⁰ Stephen J. Ware, "Opt-In" for Judicial Review of Errors of Law under the Revised Uniform Arbitration Act, 8 AM. REV. INT'L ARB. 263, 269 (1997). Professor Ware notes that to predict if a state law, or the RUAA for that matter, is preempted by the FAA, one should simply "ask whether the state law prevents enforcement of any possible arbitration agreement." *Id.* Under this analysis, if a state law does not, on its own, render an arbitration agreement unenforceable, then preemption is not a threat to that state law. *Id.*

⁴¹ Cole, *supra* note 1, at 12-13 (opining that the RUAA could have been much more effective in protecting employees and consumers in arbitration agreements and encouraging reform at the federal level if preemption had not been a major overriding concern of the drafters); Heinsz, *supra* note 8, at 5 (recognizing that the "strong policy of federal preemption under the FAA acted as backdrop to all the discussions of the Drafting Committee while it deliberated the RUAA"); see Justin Kelly, *RUAA Seen as Model for Amendments to Federal Arbitration Act*, ADRWorld.com, at <http://www.adrworld.com> (July 27, 2000).

⁴² See Cole, *supra* note 1, at 12. Professor Cole has suggested that the RUAA cover only commercial agreements and that NCCUSL "[develop] separate acts for [matters] involving unequal bargaining." *Id.* (alterations added). The rationale behind such a suggestion is that states should have a model for developing statutes such as the "North Carolina Fair Bargain Act," which avoids preemption by applying to all adhesion contracts and rendering voidable, by employees and consumers, any rights enforcement disabling clause appearing in a standard form contract or lease. *Id.* at n.16.

⁴³ Kelly, *supra* note 7; see Text of New Mexico H.B. 768, available at <http://www.legis.state.nm.us/Session01.asp> (last visited Oct. 4, 2002).

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Utah (March 2002).⁴⁶ States such as Alabama⁴⁷ and New Jersey⁴⁸ have been actively debating the merits of the uniform act within their legislative chambers, while a host of other states have witnessed the act, at the very least, introduced in bill form.⁴⁹

The most notable aspect of how states have embraced the RUAA is that, for the most part, state legislatures, in both their proposed and eventually enacted laws, have deviated from the exact version of the act as promulgated. New Mexico, the first state to pass law directly inspired by the RUAA, placed an amendment in its legislative code barring arbitration provisions that deny procedural rights.⁵⁰ Nevada, the second state to adopt the revised act, did so with a provision eliminating an arbitrator's power to award punitive damages, a condition that did not appear in NCCUSL's version of the act.⁵¹

Additionally, Alabama is currently considering passage of the act with a provision mandating that arbitration agreements not be enforced if such an arrangement is not "entered into freely and knowingly by the parties to the contract."⁵² New Jersey lawmakers have proposed a RUAA requiring higher

⁴⁴ Justin Kelly, *Nevada Second State to Adopt Revised Uniform Arbitration Act*, ADRWorld.com, at <http://www.adrworld.com> (June 8, 2001); see Text of Nevada S.B. 336, available at <http://www.leg.state.nv.us/71st/Reports/history.cfm?ID=4105> (last visited Oct. 4, 2002).

⁴⁵ Justin Kelly, *Hawaii First to Adopt Revised Arbitration Act Unchanged*, ADRWorld.com, at <http://www.adrworld.com> (July 3, 2001); see Text of Hawaii S.B. 1571, available at http://www.capitol.hawaii.gov/session2001/bills/SB1571_.htm (last visited Oct. 4, 2002).

⁴⁶ See Text of Utah S.B. 171, available at <http://www.leg.state.ut.us/~2002/bills/sbillamd/sb0171.htm> (last visited Oct. 4, 2002).

⁴⁷ See Justin Kelly, *Alabama Weighs Significantly Modified Revised Arbitration Act*, ADRWorld.com, at <http://www.adrworld.com> (Jan. 14, 2002).

⁴⁸ See ADRWorld.com, *New Jersey Lawmakers Approve Modified Revised Uniform Arbitration Act*, at <http://www.adrworld.com> (May 13, 2002).

⁴⁹ Among those states/districts are Arizona, District of Columbia, Idaho, Illinois, Indiana, Minnesota, Missouri, Ohio, Oklahoma, Virginia, and West Virginia. See A Few Facts About the Uniform Arbitration Act (2000), at http://nccusl.org/nccusl/uniformact_factsheets/uniformacts-fs-aa.asp (last visited Oct. 4, 2002). Bills were submitted in Connecticut and Vermont, but died while in committee. Securities Arbitration Commentator, *New Jersey to Adopt Revised Uniform Arbitration Act*, at <http://www.seclaw.com/docs/sac/njadopsruaa0502.htm> (May 2002).

⁵⁰ Kelly, *supra* note 7.

⁵¹ Cole, *supra* note 1, at 12–13; Kelly, *supra* note 44.

⁵² Kelly, *supra* note 47.

levels of disclosure from arbitrators regarding conflicts of interest than required under the model act.⁵³

Ultimately, the RUAA is being used precisely in the way it was intended, as a model for state arbitration law. Much like legal practitioners and academicians, legislators, assuming they can garner consensus, are able to accept or reject provisions of the act according to their personal and political inclinations. The danger in deviating from the model RUAA, of course, is that state law, in attempting to promote equity and fairness in arbitration arrangements, may invade the province of the FAA and find itself nullified by federal preemption. It remains to be seen whether a lack of complete uniformity in its adoption by the states proves to be a liability for the RUAA in terms of its effectiveness in reforming arbitration on a broad scale.

V. CONCLUSION

Regardless of whether an observer is supportive or critical of the RUAA as enacted by NCCUSL some two years ago, there can be little doubt that this revision of a tremendously successful uniform act has spurred spirited and necessary debate among those interested in and affected by arbitration processes. In a legal world that is continuously evolving, it is necessary that new ideas, at the very least, be seen as fuel for discussion and careful analysis upon existing legal systems. Aside from being the mechanism by which to regulate state arbitration law for the twenty-first century or, perhaps, the tool with which to challenge an old and established federal arbitration scheme, the RUAA has provided the forum by which contemporary arbitration can be explored and, ideally, improved for the benefit of both seasoned and unseasoned players in arbitration.

Matthew E. Braun

⁵³ ADRWorld.com, *supra* note 48.