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FISCAL IMPACT REPORT

SPONSOR: Martinez DATE TYPED: 03/15/01 HB 768/aHJC
 SHORT TITLE: Uniform Arbitration Act SB _____
 ANALYST: Rael

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Regulation and Licensing Department (RLD)
 Public Regulation Commission (PRC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment provides a definition of the term "disabling civil dispute clause" and provides that a contractual provision modifying or limiting procedural rights may be voidable.

Significant Issues

This amendment addresses many of the "fairness" issues that arise when arbitration clauses are enforced.

Synopsis of Original Bill

The Uniform Arbitration Act is designed to replace the existing Act contained in NMSA 1978 Sections 44-7-1 through 44-7-22 (1971). The Act is based on a newly revised uniform arbitration act adopted by the Uniform Law Commissioners in 2000.

Section 1 provides definitions.

Section 2 provides a Notice provision identifying when a person receives notice, delivery of a notice to a person's home or place of business constitutes "receipt of notice."

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Section 3 defines when the Act applies, such that an agreement to arbitrate made before the effective date of the Act must be consensual.

Section 4 modifies Sections 44-7-1 and 44-7-7 of the current law and establishes nonwaivable procedures such as the ability to obtain judicial or interim relief, to subpoena witnesses, take depositions, enforce awards in court, and to appeal orders and judgments entered pursuant to the Act.

Section 5 modifies existing Section 44-7-16 regarding applications for judicial relief and how notice is to be served.

Section 6 modifies portions of Section 44-7-1 and clarifies that a court will decide whether an agreement to arbitrate exists, but that an arbitrator can decide whether a condition precedent to arbitrate has been fulfilled and whether a contract to arbitrate is enforceable. Section 6 also provides that an arbitration proceeding may proceed pending resolution of a claim that a particular controversy is not subject to arbitration.

Section 7 is related to existing Section 44-7-2, providing that a party may petition a court by motion to compel arbitration, and sets specific standards regarding when the court will decide summarily the question of whether an enforceable agreement to arbitrate exists, and what procedures to follow when an existing judicial proceeding is pending, such as whether to stay or sever the claim.

Section 8 allows for provisional remedies by the arbitrator and, in urgent circumstances, the court.

Section 9 provides a process for initiating arbitration. The proposed law allows a person to initiate an arbitration by providing notice of the nature of the controversy and the remedy sought. A person that appears at an arbitration hearing is considered to have waived objection to lack or insufficiency of notice.

Section 10 allows for the consolidation of separate arbitration provisions.

Section 11 mandates that an individual having a material interest or substantial relationship with a party may not serve as an arbitrator. Section 12 mandates disclosure requirements to ensure the impartiality of an arbitrator.

Section 13 modifies Section 44-7-4 and requires that a majority of arbitrators (where more than one exist) may exercise their powers, but that a majority must conduct the arbitration hearing.

Section 14 inserts immunity provisions not existing in current law. These immunity provisions protect an arbitrator from civil actions and from being forced to testify in judicial or administrative proceedings, and allows for the award of attorneys fees to an arbitrator or arbitration organization that succeeds in asserting such immunity.

Section 15 makes modest changes to Section 44-7-5 and provides a detailed process for hearing arbitration claims. Section 16 slightly modifies Section 44-7-6, allowing for the representation of a party by an attorney.

Section 17 provides for additional discovery procedures not contained in existing law, including the issuance of protective orders.

Section 18 provides for a pre-award ruling process not contained in existing law.

Sections 19, 20 and 24 establish procedures for recording an award and modification or correction of an award. Section 22 modifies existing Section 44-7-11 with respect to the confirmation of an award. Section 23 modifies existing Section 44-7-12 with respect to grounds for vacating an award, including lack of notice as a reason for vacating an award. Section 25 allows for the award of attorneys fees and litigation expenses upon the court's entry of an order confirming, vacating, modifying or correcting an award.

Section 21 allows for the award by an arbitrator of punitive damages, other exemplary relief, and attorneys fees.

Sections 26, 27 address jurisdiction and venue of the court. Section 28 addresses appeals, Section 29 articulates the goal of promoting uniformity of the law among states. Section 30 is a new provision incorporating section 102 of the Electronic Signatures in Global and National Commerce Act.

Significant Issues

The goal of the 2000 model Uniform Arbitration Act is to provide for more efficient and fair arbitrations as an alternative to litigation. Most agencies agree that the revised arbitration act contains all previous provisions, but provides more detailed guidance. The most significant changes allow for greater discovery, attorney's fees and punitive damages and the consolidation of separate arbitration proceedings.

FISCAL IMPLICATIONS

The fiscal implications on the judiciary will directly follow the amount of litigation that is generated or alternatively, avoided, by the Act. A reduction of litigation will have a positive fiscal impact on the judiciary. Firmly established rules on arbitration may make this a more viable alternative to litigation.

TECHNICAL ISSUES

In order to address certain "fairness" issues that continuously arise regarding arbitration clauses in contracts, Section 6 may be amended to include language providing either that arbitration clauses are not valid in contracts of adhesion, or that arbitration clauses shall comply with the due process protocols of the American Arbitration Association.

FAR/njw:ar