KANSAS BAR ASSOCIATION

TO: **The Honorable Susan Humphries**
and members of the House Committee on Judiciary

FROM: **Joseph N. Molina,** On Behalf of the Kansas Bar Association

RE: **HB 2351 - Amending the uniform arbitration act of 2000 to make certain agreements to appraise or arbitrate in contracts of insurance invalid and creating exceptions therefor.**

DATE: **January 29, 2026**

Madam Chair and Members of the House Committee on Judiciary:

Thank you for the opportunity to submit testimony on behalf of the Kansas Bar Association in **support of HB 2351**, which amends the Revised Uniform Arbitration Act of 2000 to restore Kansas's long-standing prohibition on mandatory arbitration provisions in certain contracts of insurance, while preserving limited and appropriate exceptions.

Summary of the Issue

HB 2351 corrects an unintended statutory consequence created in 2018 when Kansas adopted the Revised Uniform Arbitration Act. That legislation inadvertently removed a long-standing prohibition against binding arbitration provisions in certain insurance contracts—a result that was never intended and is inconsistent with prior Kansas law and public policy.

This bill restores the law to its intended state and clarifies that arbitration clauses in insurance contracts are not enforceable unless voluntarily agreed to after a dispute arises.

Legislative Background

In 2018, the Kansas Bar Association proposed HB 2186, adopting the Revised Uniform Arbitration Act of 2000. That bill modernized Kansas arbitration law by addressing provisional remedies, consolidation of proceedings, arbitrator disclosures, arbitrator immunity, and the authority to award punitive damages.

However, HB 2186 had an unintended consequence: it struck statutory language that prohibited binding arbitration clauses in certain insurance contracts. This result was not the goal of the legislation. HB 2186 passed both chambers and was signed into law.

In 2019, the KBA attempted to correct this error by introducing HB 2072, which intended to correct the oversight in 2018. HB 2072 received a hearing, which was recommended favorably by this committee, but was ultimately stricken from the calendar under Rule 1507.

In 2024 the KBA introduced HB 2593 which again proposed to correct the oversight created by the 2018 RUAA amendments. The House Judiciary Committee granted a hearing, but no action was taken. In May of 2024, Representative Susan Humphries and Representative Bob Lewis requested that the Judicial Council study the issue and make recommendations regarding 1) whether Kansas' Revised Uniform Arbitration Act should include a provision addressing the validity of arbitration agreements in insurance contracts, and 2) whether the bill precludes all arbitration and, if so, to suggest edits that would carry out the bill's intent while allowing parties to arbitrate. At its June 5, 2024, meeting, the Judicial Council assigned the study to the Civil Code Advisory Committee.

The Advisory Committee recommended that the KRUAA should include a provision addressing the validity of arbitration agreement in insurance contracts. In addition, the judicial council recommended several amendments to the original bill.

HB 2351 is a continuation of that corrective effort which incorporates the recommendations of the Kansas Judicial Council. The Judicial Council report is attached.

Legal Foundation and Case Law

The prohibition against binding arbitration provisions in insurance contracts has deep roots in Kansas law and has been upheld by the Kansas Supreme Court.

In *Friday v. Trinity Universal of Kansas*, 262 Kan. 347 (1997), the Court held that a binding appraisal provision in an insurance contract was effectively an arbitration clause and therefore invalid under then-existing K.S.A. 5-401. Importantly, the Court also held that the Federal Arbitration Act (FAA) did not preempt Kansas law in this context because of the McCarran-Ferguson Act, 15 U.S.C. § 1011 et seq., which grants states the exclusive authority to regulate the business of insurance.

McCarran-Ferguson operates as a "reverse preemption" statute, ensuring that state insurance regulations are not displaced by federal law unless Congress clearly provides otherwise.

Why HB 2351 Is Limited to Insurance Contracts

During the previous hearing on this subject, committee members asked why HB 2072 focuses solely on contracts of insurance and does not address arbitration in tort or employment claims.

The answer is straightforward: those areas are preempted by federal law.

Kansas courts have consistently held that the FAA preempts state prohibitions on arbitration in tort and employment contexts. See *R.J. Palmer Constr. Co. v. Wichita Band Instrument Co.*, 7 Kan. App. 2d 363 (1982); *Packard v. Credit Solutions of America, Inc.*, 42 Kan. App. 2d 382 (2009). As a result, Kansas lacks the authority to reinstate those prohibitions.

Insurance contracts are different. Because of the McCarran-Ferguson Act, Kansas retains clear authority to regulate arbitration provisions in insurance contracts. HB 2351 operates squarely within that authority.

Clarity and Scope of the Bill

If the committee has concerns regarding vagueness, Kansas law already provides a comprehensive definition of "contract of insurance" in K.S.A. 40-5202(d), which includes property, casualty, life, health, accident, surety, title, and annuity insurance. That definition may be incorporated by reference if further clarity is desired.

HB 2351 is narrowly drafted. It does not prohibit arbitration altogether. Instead, it treats arbitration clauses in insurance contracts as offers to arbitrate, allowing arbitration only if knowingly and voluntarily accepted.

Retroactivity

The Kansas Bar Association's intent is that HB 2351 apply prospectively only. The KBA is open to language that expressly clarifies the bill does not apply retroactively to contracts entered into between 2018 and the bill's effective date.

Conclusion

HB 2351 restores Kansas law to its intended and historically supported position, aligns with Kansas Supreme Court precedent, respects federal preemption boundaries, and preserves consumer protections in insurance contracts.

For these reasons, the Kansas Bar Association respectfully urges the House Judiciary Committee to support HB 2351.

Thank you for your time and consideration. The KBA is happy to provide additional information or work with the committee on any technical concerns.

On behalf of the Kansas Bar Association, we thank you for your time.

About the Kansas Bar Association:
The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals. Its more than 5,500 members include lawyers, judges, law students, and paralegals. www.ksbar.org

APPROVED BY THE JUDICIAL COUNCIL
DECEMBER 6, 2024

REPORT OF THE JUDICIAL COUNCIL
CIVIL CODE ADVISORY COMMITTEE ON 2024 HB 2593

DECEMBER 6, 2024

In May 2024, Representative Susan Humphries and Representative Bob Lewis requested that the Judicial Council study 2024 HB 2593 and make recommendations regarding 1) whether Kansas' Revised Uniform Arbitration Act should include a provision addressing the validity of arbitration agreements in insurance contracts, and 2) whether the bill precludes all arbitration and, if so, to suggest edits that would carry out the bill's intent while allowing parties to arbitrate. At its June 5, 2024, meeting, the Judicial Council assigned the study to the Civil Code Advisory Committee.

COMMITTEE MEMBERSHIP

The members of the Judicial Council Civil Code Advisory Committee are:

F. James Robinson, Chairman, practicing attorney in Wichita and member of the Kansas Judicial Council

James M. Armstrong, practicing attorney, Wichita

Hon. Bruce T. Gatterman, Chief Judge in the 24th Judicial District, Larned

Prof. Alex Glashausser, Professor at Washburn University School of Law, Topeka

Allen G. Glendenning, practicing attorney, Great Bend

John L. Hampton, practicing attorney, Lawrence

Hon. Kellie E. Hogan, District Court Judge in the 18th Judicial District, Wichita

David R. Morantz, practicing attorney, Kansas City, Missouri

Hon. Kevin P. Moriarty, Retired District Court Judge in the 10th Judicial District, Olathe

Dean Lumen N. Mulligan, Dean of University of Missouri–Kansas City School of law

Donald W. Vasos, attorney, Mission

Etta L. Walker, practicing attorney, Sharon Springs

Hon. Teresa L. Watson, District Court Judge in the 3rd Judicial District, Topeka

Larry Zimmerman, practicing attorney, Topeka

Introduction

House Bill 2593 was introduced on January 24, 2024, at the request of the Kansas Bar Association (KBA). The bill would amend K.S.A. 5-428, which provides that an agreement "to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable, except upon a ground that exists at law or in equity for the revocation of a contract." The new language added to the statute in HB 2593 would create an exception, rendering invalid and unenforceable an arbitration agreement contained in a contract of insurance, except for contracts between insurance companies, to arbitrate existing or subsequent controversies. The bill sought to correct what KBA says was an inadvertent omission. In 2018, a bill introduced at the request of KBA was passed that repealed the Kansas Uniform Arbitration Act (KUAA), K.S.A. 5-401 *et seq.*, and replaced it with the Kansas Revised Uniform Arbitration Act (KRUAA), K.S.A. 5-423 *et seq.*

HB 2593 was referred to the House Judiciary Committee, where a hearing was held on February 12, 2024. KBA testified at the hearing that the insurance contract exception contained in HB 2593 was inadvertently omitted from the 2018 Kansas law. Other proponents included the Kansas Trial Lawyers Association and an attorney who represents policyholders. Opponents of the bill included the Kansas Chamber of Commerce and representatives of the insurance industry. The bill died in committee, but Representatives Humphries and Lewis, Chair and Vice Chair of the House Judiciary Committee, later requested that the Judicial Council study the bill and whether the RUAA should include a provision addressing the validity of arbitration agreements in contracts of insurance.

Method of Study

The Civil Code Advisory Committee (Committee) met three times during the summer and fall of 2024 to conduct the study. The Committee reviewed background materials including: HB 2593 and the written testimony offered by conferees when the bill was heard in House Judiciary; applicable Kansas statutes governing arbitration, including the KUAA, the former governing act, and the KRUAA, which is current law; relevant Kansas case law; and summaries of other states' statutes relating to arbitration and insurance contracts. The Committee also heard presentations from these invited speakers: Joe Molina, who spoke on behalf of KBA; Russell Hazlewood, an attorney who represents Kansas policyholders in disputes with insurance companies; and Zach Chaffee-McClure, who appeared on behalf of the Kansas Association of Property Casualty Insurance Association and the American Property Casualty Insurance Association. The

Committee also received written input from Sarah Fertig, on behalf of Blue Cross and Blue Shield of Kansas.

History of Arbitration Law in Kansas

The first arbitration statutes in Kansas were enacted in 1876, and these statutes still exist at K.S.A. 5-201 *et seq.* The Kansas Supreme Court has held that K.S.A. 5-201 "contemplates the submission and arbitration only of existing disputes."[1] The 1876 statutes codified and enlarged upon Kansas common law arbitration rules.[2] The common rules provided that "either party may revoke the arbitration agreement at any time prior to the making of an award, even where the parties have entered into an express agreement not to revoke."[3] The Kansas Supreme Court has held that under the common law, revocation of an agreement to arbitrate can be implied from one party's refusing to appoint an arbitrator or any act that makes it impossible for arbitrators to proceed.[4]

In 1955, the National Conference of the Commissioners on Uniform State Laws, also known as the Uniform Law Commission (ULC), adopted the Uniform Arbitration Act (UAA). The American Bar Association approved the UAA in 1956. In 1973, Kansas passed the KUAA, codified at K.S.A. 5-401 *et seq.* The Kansas version was different from the UAA in that it did not apply to contracts of insurance, employment contracts, or future tort claims.[5]

The ULC approved a Revised Uniform Arbitration Act (RUAA) in 2000. In 2017, KBA requested introduction of HB 2186, which would repeal the existing KUAA and replace it with the KRUAA. The bill was heard in the House Judiciary Committee, where there was one proponent conferee testifying on behalf of KBA. There was also written testimony submitted by a representative of the ULC. There were no opponents. The testimony focused on how the revised version of the act improves upon and updates the decades-old UAA. The proposed legislation did not contain any of the exceptions that that had been included in Kansas' 1973 version of the UAA, and there is no evidence in the legislative history that this substantive change was raised or discussed at any point during the act's circuitous route to becoming law.

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[1] *Thompson v. Phillips Pipe Line Co.*, 200 Kan. 669, 674, 438 P.2d 146 (1968).

[2] Marion Beatty, *Voluntary Arbitration—Its Legal Status and How It Works*, 22 J.B.A.K. 208, 217 (1954).

[3] *City of Lenexa v. C.L. Fairley Constr. Co.*, 245 Kan. 316, 321–22, 777 P.2d 851 (1989).

[4] *Thompson v. Phillips Pipe Line Co.*, 200 Kan. 669, 675, 438 P.2d 146 (1968).

[5] See L. 1973, ch. 24, § 1.

The House Judiciary Committee recommended HB 2186 for passage, and the bill passed the House after being amended to add "due process" protections for teachers. Over the subsequent weeks, the bill was referred first to the Senate Judiciary Committee and then to the Senate Select Committee on Education Finance. The entire contents of HB 2186 were later stripped out and replaced with other legislation on the Senate floor. In the 2018 legislative session, the original contents of HB 2186, the KRUAA, were inserted into HB 2571 in a "gut and go" maneuver in the Judiciary Conference Committee. That conference committee report then passed the Senate unanimously with no Senate committee ever having conducted a hearing on the KRUAA legislation. The KRUAA went into effect on July 1, 2018.

According to KBA, the organization first became aware that the KRUAA's passage had resulted in a substantive change in the law regarding insurance contracts when it was informed of the change by a Kansas licensed attorney and mediator who contacted KBA on August 1, 2018.

In 2019, KBA requested introduction of legislation to reinstate the exception for insurance contracts that had been inadvertently omitted from the KRUAA legislation it had proposed the year before. The bill was heard in the House Judiciary Committee. The committee recommended the bill for passage, but it did not make it to the floor for debate and was stricken from the calendar. In 2024, KBA again introduced a bill to address this issue. The proposed addition to K.S.A. 5-428(a) as set forth in 2024 HB 2593 was as follows:

> *(2) An agreement contained in a contract of insurance to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement, except for those contracts between insurance companies, including reinsurance contracts, shall not be valid, enforceable or irrevocable.*

Employment contracts and tort claims, which had been excluded under the KUAA, were not included in the 2024 proposed legislation because those provisions have, through case law, been preempted by the Federal Arbitration Act (FAA), enacted in 1925.[6] The U.S. Supreme Court has held that the substantive law created by the FAA is also applicable to the states and that "Congress intended to foreclose state legislative attempts to undercut the enforceability of arbitration agreements."[7] However, Congress created an exception to the FAA's applicability when it passed the McCarran-Ferguson Act in 1945.[8] The Kansas Supreme Court has held that

[6] 9 U.S.C. §§ 1-16.

[7] *Southland Corp. v. Keating*, 465 U.S. 1, 16, 104 S.Ct. 852, 79 L.Ed.2d1 (1984).

[8] 15 U.S.C.A. § 1012.

the KUAA's insurance exemption provision in K.S.A. 5-401 was not preempted because states have the exclusive right to regulate insurance under the McCarran-Ferguson Act.[9]

As noted earlier, HB 2593 was heard in the House Judiciary Committee, but no further action was taken during the 2024 legislative session.

Law in Other States

Kansas was not alone in exempting insurance contracts when it passed the UAA in 1973. Several other states that are still operating under the original UAA, including Missouri and Nebraska, have very similar language exempting insurance contracts.[10] Two states, Oklahoma and Arkansas, have passed the RUAA and opted to include the insurance contract exemption in the revised act.[11] Other states address the issue through statutes governing insurance. These statutes contain language providing in substance that no contract of insurance delivered in the state shall contain any condition, stipulation, or agreement depriving the state's courts of jurisdiction of an action against the insurer.[12] One state has not adopted either the UAA or the RUAA but has a statute prohibiting mandatory arbitration clauses in consumer insurance contracts.[13] Other states have different limitations. Due to the various approaches states have taken, sources categorize the state laws in different ways. However, as many as half of the states have laws limiting or prohibiting mandatory arbitration clauses in insurance contracts.[14]

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[9] *Tommie L. Friday v. Trinity Universal of Kansas*, 262 Kan. 347, 352, 939 P.2d 869 (1997).

[10] See, *e.g.*, Georgia, Ga. Code Ann. § 9-9-2; Kentucky, KRS 417.050; Missouri, Mo. Rev. Stat. § 435.350; Nebraska, Neb. Rev. St. § 25-2602.01; South Carolina, S.C. Code Ann. §15-48-10; and South Dakota, SDCL 21-25A-3.

[11] Oklahoma, 12 Okla. Stat. § 1855; Arkansas, Ark. Code Ann. § 16-108-233.

[12] See, *e.g.*, Hawaii, HRS § 431:10-221; Louisiana, La. Rev. Stat. § 22:868; Utah, U.C.A. § 31A-21-314; Virginia, Va. Code Ann. § 38.2-312; Washington, RCWA 48.18.200.

[13] Maryland, Md. Code Ann., Cts. & Jud. Proc. § 3-206.1.

[14] See, *e.g.*, Peter A. Halprin, Stephen Wah, Kayla N. Auza, *"US Anti-Arbitration Law Applicable to Insurance Policies,"* Westlaw Practical Law, https://us.practicallaw.thomsonreuters.com/w-039-3244 (2024); Susan Randall, *"Mandatory Arbitration in Insurance Disputes: Inverse Preemption of the Federal Arbitration Act,"* 11 Conn. Ins. L.J. 253, 265-76 (2004/2005); Gilbert Samberg, *Competing Legal Factors Vex Insurance Arbitration Disputes* (July 8, 2019), https://www.law360.com/articles/1175182/competing-legalfactors-vex-insurance-arbitration-disputes.

Discussion

Kansas legislative archives don't provide a clear answer to the question of why insurance contracts were carved out of the UAA when the KUAA was enacted in 1973. One possible motivator is suggested in *Friday v. Trinity Universal of Kansas*, 262 Kan. 347, 349-50, 939 P.2d 869 (1997), where the Kansas Supreme Court discussed the importance of legislative intent in determining whether the legislature intended for appraisals to be a form of arbitration or something separate from arbitration and thus allowable in insurance contracts. "Here, the legislature was faced with unilateral contracts providing for a mandatory method of setting the loss, thereby denying the insured redress in the courts."

The Court's language regarding "unilateral contracts" is consistent with the concerns voiced by Committee members and proponents of HB 2593 that most insureds have no ability to negotiate the provisions in an insurance policy. Insurance policies are "take it or leave it" contracts of adhesion that are inconsistent with the premise that arbitration is a form of alternative dispute resolution in which the parties negotiate an agreement to submit disputes to a neutral third party for a final and binding determination. Policyholders are generally not allowed to see an insurance policy until after they buy it, and it is often presented in multiple pieces and difficult to figure out. If the policy provides for mandatory arbitration, the insured loses the constitutional right to access to the courts and has had no say in the matter. The drafters of the RUAA were also concerned about contracts of adhesion.[15] The drafting committee felt it would be desirable to address contracts of adhesion in the RUAA but thought the federal preemption doctrine did not allow treating the validity of such contracts differently. The RUAA drafters were tasked with drafting a uniform law that works in all states, and some states have held differently than Kansas regarding whether the McCarran-Ferguson Act reverse-preempts the FAA and allows the state to prohibit mandatory arbitration agreements in insurance policies. Under current law in Kansas, insurance contracts can be treated differently, and the insurance contract exception in the former KUAA was upheld by the Kansas Supreme Court.[16]

Many of the opponents of HB 2593, primarily representatives of the insurance industry, made arguments based on the benefits of arbitration and noted how good arbitration is for consumers. Some of the benefits attributed to arbitration are that it is faster, less expensive, more

[15] See *"Policy Statement—Revised Uniform Arbitration Act (RUAA),"* Section 4, Contracts of Adhesion and Arbitration.

[16] *Tommie L. Friday v. Trinity Universal of Kansas*, 262 Kan. 347, 352, 939 P.2d 869 (1997).

flexible, and offers a degree of privacy. The Committee does not disagree that all these stated advantages of arbitration are true when there are two parties with equal standing who agree to use arbitration and then negotiate the terms of the arbitration process. However, these benefits may not inure to insureds when the policy contains a mandatory arbitration clause. In those cases, the stated advantages of arbitration are more likely to benefit only the insurance company that has drafted the contract, including the parameters of the arbitration process.[17]

The Committee acknowledges the opponents' point that mandatory arbitration agreements in contracts of adhesion are now commonplace, but also believes that insurance contracts are different from contracts for the purchase of cell phones or concert tickets. First, all other types of mandatory arbitration agreements are allowed under the FAA, but the law in Kansas allows insurance contracts to be treated differently due to the reverse-preemption of the McCarran-Ferguson Act. In addition, insurance is different because it is often a mandatory purchase. The state requires auto insurance to register a vehicle. Home insurance is required if you have a mortgage. Consumers don't have a choice about whether to buy these policies and do not typically have the ability to negotiate the terms.

The proponents of HB 2593 contend that the passage of the KRUAA in 2018 resulted in a significant change in the law by removing an exception and that the exception needs to be restored. Opponents have expressed concern that it will cause harm to insurance companies to change the law back after it has been in effect for the six years since 2018. The proponents point out that the exception was in effect in the KUAA for 45 years, and they are not aware of any problems or complaints raised by the insurance industry during that time. The Committee notes that the law was in effect far longer than 45 years because until the KUAA was passed in 1973, mandatory arbitration of a future dispute was not allowed in any contract. The Committee was not provided with any data regarding how many insurers have changed their policies since the law was changed in 2018. Although it was only anecdotal, a practitioner in this area stated that more than half of the policies he sees have not added mandatory arbitration provisions.

[17] Susan Randall, "*Mandatory Arbitration in Insurance Disputes: Inverse Preemption of the Federal Arbitration Act,*" 11 Conn. Ins. L.J. 253, 257-62 (2004/2005).

Recommendation

After reviewing and considering all information presented on this issue, on a 9-2 vote the Committee recommends that the KRUAA should include a provision addressing the validity of arbitration agreements in insurance contracts. KBA asserts that if it had been aware of the omission of the insurance exception in the legislation requested in 2017 to enact the KRUAA, it would not have moved forward without addressing that omission. The Committee understands that the legislative intent is shown by what was passed. However, there are concerns about whether the legislature was fully informed about the consequences of enacting the KRUAA. If the subject matter experts who proposed the legislation were not aware that one short paragraph from the KUAA was missing from the 14-page KRUAA, it is incongruous to believe all the legislators were aware of the omission.

There is no question that the legislature can enact statutes that amend or repeal the common law. However, the Committee believes that generally, statutes should not change the common law unless they effect the change with intention and clarity. The Committee found no indication that the legislature intended to change the existing common law, recognized that the statutory exception in the KUAA for insurance contracts was not picked up in the KRUAA, or discussed the effect of the KRUAA on Kansas public policy as to provisions in insurance policies requiring arbitration of future disputes.

The Committee believes that overturning such a long-standing principle of law deserves a full and robust discussion during which substantive changes under consideration are clearly disclosed. When the KRUAA was passed in 2018, the legislature did not consider the quality or vitality of the long-standing public policy rationale as to enforcing arbitration provisions in insurance contracts. The legislature has not considered whether the KUAA's exception was eroded by court decisions or whether the exception is an outlier when compared to other states' statutes. Finally, the legislature has not considered whether it should retain the exception, even if flawed, because repealing the exception results in hardship to individuals, companies, or organizations who relied on the statutory exception and the common law as to which arbitration provisions and practice comport with Kansas public policy.

In the Committee's view, restoring the exception is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles.

Although the FAA has preempted the state's ability to limit mandatory arbitration provisions in contracts of adhesion in almost every other context, it is still within the state's authority to maintain a prohibition on mandatory arbitration in insurance contracts, and the Committee believes the insurance exception should be reinstated. The Committee recommends several amendments to the language proposed in HB 2593 as shown below.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 5-428 is hereby amended to read as follows: (a) *(1)* ~~*Except as provided in paragraph (2),*~~ an agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable, except upon a ground that exists at law or in equity for the revocation of a contract**, or as provided in paragraph (2)**.

(2) *An agreement contained in a contract of insurance to submit to* **appraisal or** *arbitration any existing or subsequent controversy arising between the parties to the agreement, except for those contracts between insurance companies, including reinsurance contracts, shall not be valid, enforceable or irrevocable*, **but shall be regarded as an offer by the insurance company to enter into binding or nonbinding arbitration**.

Explanation of amendments:

- The suggested change to subsection (a)(1) is simply to improve readability by modifying the phrase added to the beginning of the paragraph and moving it to the end to avoid having two "except" clauses.
- "Appraisal" is added to subsection (a)(2) to make clear that appraisals are a form of arbitration in insurance contracts and are prohibited, consistent with the Kansas Supreme Court's ruling in *Tommie L. Friday v. Trinity Universal of Kansas*, 262 Kan. 347, 351, 939 P.2d 869 (1997).
- The final clause in subsection (a)(2) was added to clarify that the parties are not prohibited from entering into voluntary arbitration of a dispute. The study request asked whether HB 2593 precludes arbitration as written. The Committee believes that the bill does not prohibit an insured and an insurer from entering into an arbitration agreement as to an existing dispute; rather, the bill invalidates agreements to arbitrate future insurance disputes.

The Committee also addressed an issue raised by Sarah Fertig's written input submitted on behalf of Blue Cross and Blue Shield of Kansas. Ms. Fertig recommended that if the ban on arbitration agreements in insurance policies is reinstated, it should expressly state when it would become effective. As she noted, statutes are generally presumed to operate prospectively absent clear language to the contrary. However, if the legislature believes clarification is desirable, the Committee recommends amending the first line of subsection (a)(2) as follows:

> (2) *An agreement contained in a contract of insurance* **entered into or renewed after the effective date of this section** *to submit to* **appraisal or** *arbitration any existing or subsequent controversy arising between the parties to the agreement, ...*

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

SUSAN HUMPHRIES
99TH DISTRICT

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May 31, 2024

Nancy Strouse, Executive Director
Kansas Judicial Council
301 SW 10th Avenue
Suite 140
Topeka, Kansas 66612

Dear Executive Director Strouse:

We respectfully request the Judicial Council study whether Kansas' Revised Uniform Arbitration Act (RUAA), KSA 5-423 *et seq.*, should include a provision addressing the validity of certain arbitration agreements in insurance contracts.

The House Committee on Judiciary held a hearing on 2024 HB 2593 on February 12, 2024. The bill would have amended the RUAA to specify that arbitration agreements in insurance contracts are invalid except for those contracts between insurance companies.

The bill's proponents stated the bill would restore a provision that was unintentionally removed in 2018 when the state adopted revisions to the UAA proposed by the Uniform Law Commission. The bill's opponents stated the bill would unfairly single out the insurance industry and would prohibit the use of arbitration agreements between parties, even when such agreements prevent time-consuming and costly litigation.

Following the hearing, the Committee requested the Kansas Legislative Research Department (KLRD) research how other states have implemented the RUAA (request response attached).

If the Judicial Council agrees to this study, we would appreciate any recommendation regarding whether the bill precludes arbitration as written and any suggested edits to carry out the bill's intent while allowing parties to arbitrate.

TOPEKA OFFICE: STATE CAPITOL, 300 SW 10TH, TOPEKA, KANSAS 66612 • 785.296.7699
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susan.humphries@house.ks.gov

Please let us know if we can provide further information or answer any questions regarding this request.

Sincerely,

Susan Humphries

Representative Susan Humphries
Chairperson, House Committee on Judiciary

Bob Lewis

Representative Bob Lewis
Vice-Chairperson, House Committee
on Judiciary

Attachment

Attachment

From: Mike Ditch
To: Susan Humphries
Cc: Natalie Nelson; Jordan Milholland
Subject: Uniform Arbitration Act request
Date: Friday, March 1, 2024 4:30:05 PM

Hi Representative Humphries,

Jordan forwarded me your request about other states' implementation of the 2000 Uniform Arbitration Act (UAA) and if they include the insurance provision found in HB 2593.

Below is a summary of what we found. We only looked at states that adopted the 2000 UAA and their UAA provisions.

Let us know if you have any additional questions.

Respectfully,

Mike Ditch Jr., JD, MBA
Research Analyst
Kansas Legislative Research Department (KLRD)
State Capitol Building – Rm 68-West
300 SW 10th Ave
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785-296-3181
785.296.4409 (Direct)
Mike.Ditch@klrd.ks.gov

Comparisons of validity of agreement to arbitrate provision (provision being modified by HB2593):

- States that adopted the UAA and the relevant provision verbatim, or nearly so, like Kansas did
  - Arizona
  - Arkansas
  - Colorado
  - Connecticut
  - Hawaii
  - Michigan
  - Minnesota
  - Nevada
  - New Jersey
  - New Mexico
  - North Carolina
  - North Dakota
  - Oklahoma
  - Tennessee
  - Utah
  - Washington
- States that adopted the UAA and the relevant provision but not verbatim, or nearly so, like Kansas and does not include an insurance provision:
  - Alaska

- Florida
- Oregon
- Pennsylvania
- West Virginia

- States that adopted the UAA and the relevant provision and included the insurance provision like HB2593 intends to
  - None

Clarification on UAA change that led to the bill

One last item that may be of interest to the Judiciary committee. Nebraska adopted the 1956 UAA. Here's the validity of agreement provision from that Act. As you can see, (f)(4) was dropped with the 2000 UAA that was adopted by Kansas.

Session of 2024

HOUSE BILL No. 2593

By Committee on Judiciary

Requested by Joe Molina on behalf of the Kansas Bar Association

1-24

AN ACT concerning arbitration; making certain agreements to arbitrate in contracts of insurance invalid and creating exceptions therefor; amending K.S.A. 5-428 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 5-428 is hereby amended to read as follows: 5-428. (a) *(1) Except as provided in paragraph (2),* an agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable, except upon a ground that exists at law or in equity for the revocation of a contract.

(2) An agreement contained in a contract of insurance to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement, except for those contracts between insurance companies, including reinsurance contracts, shall not be valid, enforceable or irrevocable.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

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

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

Sec. 2. K.S.A. 5-428 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.