Legislative Analysis

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UNIFORM ARBITRATION ACT

Senate Bill 901 (Substitute H-1)
Senate Bill 902 (Substitute H-1) ***(Enacted as Public Acts 369, 370, and 371 of 2012)***
Senate Bill 903 (Substitute H-1)
Sponsor: Sen. Tonya Schuitmaker

House Committee: Judiciary
Senate Committee: Judiciary

Complete to 11-27-12

A SUMMARY OF SENATE BILLS 901-903 AS REPORTED BY HOUSE COMMITTEE

Senate Bill 903 would adopt the Uniform Arbitration Act, a model act proposed by the Uniform Law Commission, to provide for the enforceability of agreements to arbitrate disputes, provide procedures for the arbitration of disputes, provide remedies, and provide immunity from civil liability and testimonial privileges.

[According to the Uniform Law Commission, the 2000 Uniform Arbitration Act revises the UAA of 1956, adopted in 49 states, to reflect new developments in arbitration law. Information on the act from the Uniform Law Commission can be found at: http://www.uniformlaws.org/Act.aspx?title=Arbitration Act (2000)]

Senate Bill 901 would amend the Condominium Act to require arbitration conducted under the act to proceed according to The Uniform Arbitration Act.

Senate Bill 902 would amend the Revised Judicature Act to specify that Chapter 50B (Domestic Relations Arbitration) would control in cases of conflicts between Chapters 50 (Arbitrations), 50B, and the new Uniform Arbitration Act and repeal Chapter 50.

Senate Bills 901 and 902 are each tie-barred to Senate Bill 903. Senate Bill 903 is tie-barred to both of those bills. Thus, none of the bills could take effect unless all three bills were enacted. All three bills would take effect on July 1, 2013.

Senate Bill 903 would adopt the Uniform Arbitration Act, a model act proposed by the Uniform Law Commission (The National Conference of Commissioners on Uniform State Laws). A brief summary of the act follows.

Scope of Act
On or after July 1, 2013, the proposed Uniform Arbitration Act would govern an agreement to arbitrate whenever made. The act would not apply to an arbitration between members of a voluntary membership organization if arbitration is required and administered by the organization. A party to such an arbitration could request a court to

enter an order confirming an arbitration award and could confirm the award or vacate the award for a reason contained in Section 23(1)(a),(b), or (d) of the act. (Section 3)

Except as otherwise provided, a party to an agreement or proceeding could waive, or the parties could vary the effect of, the act's requirements to the extent permitted by law. (Section 4)

In applying and construing the act, consideration would have to be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (Section 29)

The act would not affect an action or proceeding "commenced or right accrued" before it took effect. (Section 33)

Notice

Except as otherwise provided, a person would give notice to another person by taking action that was reasonably necessary to inform the other person in ordinary course, regardless of whether the other person acquired knowledge of the notice. A person would have notice if he or she had knowledge of the notice or had received notice. A person would receive notice when it came to his or her attention or the notice was delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications. (Section 2)

Agreement to Arbitrate

An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement would be valid, enforceable, and irrevocable except on a ground that existed at law or in equity for the revocation of a contract. "Record" would mean information that is inscribed on a tangible medium or is stored in an electronic or other medium and is retrievable in perceivable form.

The court would have to decide whether an agreement to arbitrate existed or a controversy was subject to an agreement to arbitrate. (Section 6)

Upon a person's motion showing an agreement to arbitrate and alleging another person's refusal to arbitrate, the court would have to do both of the following:

- Order the parties to arbitrate, if the refusing party did not appear or did not oppose the motion.
- Proceed summarily to decide the issue and order the parties to arbitrate, if the refusing party opposed the motion, unless the court found that there was no enforceable agreement to arbitrate.

If the court found that there was no enforceable agreement, it could not order the parties to arbitrate. The court could not refuse to order arbitration because the claim subject to arbitration lacked merit or grounds for the claim had not been established.

If a party moved the court to order arbitration, or if the court ordered arbitration, the court would have to stay any judicial proceeding that involved a claim alleged or actually subject to arbitration. (Section 7)

Unless a civil action already was pending between the parties, a complaint regarding the agreement to arbitrate would have to be filed and served as in other civil actions. (Section 5)

Provisional Remedies

Before appointment of an arbitrator, the court could enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action. After an arbitrator was appointed and was authorized and able to act, both of the following would apply:

- The arbitrator could issue orders for provisional remedies, as he or she found necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy.
- A party to an arbitration proceeding could move the court for a provisional remedy only if the matter were urgent and the arbitrator could not act in a timely manner or provide an adequate remedy. (Section 8)

Arbitration Proceedings

Initiation of Proceedings. A person would initiate an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner or, in the absence of an agreement, by certified or registered mail or by service as authorized for the commencement of a civil action. Unless a person objected for lack or insufficiency of notice, the person would waive any such objection by appearing at the hearing. (Section 9)

Consolidation of Proceedings. Unless an agreement to arbitrate prohibited consolidation, the court could consolidate separate arbitration proceedings as to all or some of the claims, if all of the following applied:

- There were separate agreements to arbitrate or separate arbitration proceedings between the same people, or one of them was a party to a separate agreement with a third person.
- The claims subject to the agreements to arbitrate arose in substantial part from the same transaction or series of related transactions.
- The existence of a common issue of law or fact created the possibility of conflicting decisions in the separate arbitration proceedings.
- Prejudice resulting from a failure to consolidate was not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation. (Section 10)

Appointment of Arbitrator. If the parties agreed on a method for appointing an arbitrator, that method would have to be followed unless it failed. If the parties had not agreed, the agreed-upon method failed, or an appointed arbitrator failed to act and a successor had not been appointed, the court would have to appoint the arbitrator. An individual who had a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party, could not serve as an arbitrator. (Section 11)

Before accepting appointment, an individual who was requested to serve as an arbitrator would have to disclose to all parties and to any other arbitrators any known facts that a reasonable person would consider likely to affect the arbitrator's impartiality. If an arbitrator disclosed a fact required to be disclosed and a party timely objected to the appointment or continued service of the arbitrator, the objection could be a ground for vacating an award made by that arbitrator. If an arbitrator did not disclose a fact required to be disclosed, the court could vacate an award upon a timely objection by a party. (Section 12)

Arbitrators & Hearings

If there were more than one arbitrator, the powers of an arbitrator would have to be exercised by a majority of them, but all would have to conduct the hearing. (Section 13)

An arbitrator, or an arbitration organization acting in that capacity, would be immune from civil liability to the same extent as a judge acting in a judicial capacity.

In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization would not be competent to testify and could not be required to produce records regarding arbitration proceedings, to the same extent as a judge acting in a judicial capacity. This would not apply, however, to the extent necessary to determine the claim of an arbitrator or organization against a party to the arbitration proceeding or to a hearing on a motion to vacate an award if the moving party established that a ground for vacating the award existed. (Section 14)

An arbitrator could conduct an arbitration in the manner that he or she considered appropriate for a fair and expeditious disposition of the proceeding. The arbitrator's authority would include the power to hold conferences with the parties before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

An arbitrator could decide a request for summary disposition if all interested parties agreed or, on the request of one party, if that party gave notice to all other parties and they had reasonable opportunity to respond.

An arbitrator who ordered a hearing would have to set a time and place and give notice of the hearing not less than five days before it began. On a party's request and for good cause, or on the arbitrator's own initiative, the arbitrator could adjourn the hearing as

necessary but could not postpone it to a time later than that fixed by the agreement to arbitrate unless the parties consented to a later date.

If an arbitrator ceased or could not act during the proceeding, a replacement arbitrator would have to be appointed to continue the proceeding and to resolve the controversy. (Section 15)

A party to an arbitration proceeding could be represented by a lawyer. (Section 16)

An arbitrator could issue a subpoena for the attendance of a witness and for the production of records and other evidence, and could administer oaths. An arbitrator could permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who could not be subpoenaed or was unable to attend a hearing.

An arbitrator could permit or limit discovery. An arbitrator who allowed discovery could order a party to comply with the discovery-related orders, issue subpoenas for the attendance of witnesses and the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action.

An arbitrator could issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action. (Section 17)

Arbitration Awards

If an arbitrator made a pre-award ruling in favor of a party, the party could request the arbitrator to incorporate the ruling into an award. A prevailing party could move the court for an expedited order to confirm the award, in which case the court would have to decide the motion summarily. The court would have to issue an order to confirm the award unless it vacated, modified, or corrected the award. (Section 18)

An arbitrator would have to make a record of an award and give each party a copy. (Section 19) On motion by a party, the arbitrator could modify or correct an award based on circumstances specified in the proposed act. (Section 20)

An arbitrator could award punitive damages or other exemplary relief if that award were authorized by law in a civil action involving the same claim, and the evidence produced at the hearing justified the award under the legal standards applicable to the claim. An arbitrator could award reasonable attorney fees and other reasonable expense, if that award were authorized by law in a civil action involving the same claim or by agreement of the parties. The arbitrator could order other remedies that he or she considered just and appropriate. An arbitrator's expenses and fees, and other expenses, would have to be paid as provided in the award. (Section 21)

On motion to the court by a party to an arbitration proceeding, the court would have to vacate an arbitration award if certain conditions existed. The court could order a rehearing, unless the award had been vacated because there was no agreement to arbitrate. If the court denied a motion to vacate an award, it would have to confirm the award unless there was a motion to modify or correct the award pending. (Section 23)

The court also could modify or correct an arbitration award, under certain circumstances. (Section 24)

On granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court would have to enter a judgment that conformed with the order. The judgment could be recorded and enforced as any other judgment in a civil action. The court could allow reasonable costs of the motion and subsequent judicial proceedings. On request of a prevailing party to a contested judicial proceeding, the court also could add reasonable attorney fees and other reasonable expenses of litigation, incurred in a judicial proceeding after the award was made, to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award. (Section 25)

A Michigan court that had jurisdiction over the controversy and over the parties could enforce an agreement to arbitrate. An agreement to arbitrate that provided for arbitration in Michigan would confer exclusive jurisdiction on the court to enter judgment on an award under the proposed act. (Section 26)

Appeals

Except as provided below, a request for judicial relief under the proposed act would have to be made by motion to the court and heard in the manner provided by court rule for making and hearing motions. (Section 5)

An appeal could be taken from any of the following:

- An order denying a motion to compel arbitration.
- An order granting a motion to stay arbitration.
- An order confirming or denying confirmation of an award.
- An order modifying or correcting an award.
- An order vacating an award without directing a rehearing.
- A final judgment entered under the proposed act.

The appeal would have to be taken as from an order or a judgment in a civil action. (Section 28)

Electronic records and signatures

Provisions of the act that govern the legal effect, validity, and enforceability of electronic records or electronic signatures, and contracts performed with the use of either, would have to conform to the requirements of Section 102 of the federal Global and National Commerce Act. (Section 30)

Senate Bill 901 would amend the Condominium Act (MCL 559.244), which regulates the sale and development of condominiums. Currently, the act requires a developer, at the option of a purchaser or co-owner of a condominium (or an association of co-owners), to execute a contract to settle by arbitration certain claims that might be the subject of a civil action against the developer. The arbitration must be conducted by the Arbitration Association. Except for editorial revisions, these provisions would remain unchanged.

The act also requires arbitration to proceed according to Chapter 50 of the Revised Judicature Act, entitled "Arbitrations." Instead, the bill would strike references to the provisions of Chapter 50 and require arbitration to proceed according to The Uniform Arbitration Act, in conformity to provisions of Senate Bills 902 and 903.

Senate Bill 902 would amend the Revised Judicature Act (MCL 600.5070) to specify that if there were a conflict between Chapter 50B (Domestic Relations Arbitration) and either Chapter 50 (Arbitrations) or the Uniform Arbitration Act, Chapter 50B would control under the bill. The bill would repeal Chapter 50 effective July 1, 2013.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on state and local government. The resolution of cases through arbitration typically results in reduced costs for courts. However, as these bills replace arbitration laws already in place, it is unclear if the bills would have any additional impact on court caseloads, and thus may not have a significant fiscal impact compared to current law.

POSITIONS:

Representatives of the Alternate Dispute Resolution Section of the State Bar of Michigan testified in support of the bills. (11-8-12)

The Michigan Chamber of Commerce indicated support for Senate Bills 901 and 902. (11-8-12)

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Fiscal Analyst: Erik Jonasson

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.