Federal Arbitration Act Comparison

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RECENT DEVELOPMENTS

FEDERAL ARBITRATION ACT COMPARISON*

In Southland v. Keating,1 the United States Supreme Court held that under certain circumstances, the Federal Arbitration Act2 (FAA) preempts state law concerning the enforceability of arbitration agreements.3 The Supreme Court stated that by enacting the FAA, "Congress declared a national policy favoring arbitration."4

The question the Supreme Court left unanswered in Southland is which FAA provisions must be applied by state courts.5 Although the FAA clearly preempts state law on the enforceability of arbitration clauses,6 state procedural rules may still apply in enforcing arbitration agreements.7 Since the extent of preemption remains to be determined, it is important for practitioners to be aware of and review potential areas of state arbitration acts which may be superceded by the FAA. Accordingly, a comparison of the FAA with selected state arbitration statutes will lend practitioners some guidance in determining the applicable law.

Alaska

Alaska has adopted an arbitration act substantially similar to the Uniform Arbitration Act8 (hereinafter "UAA"). Although the Alaska act is also relatively similar to the FAA, the Alaska statute does contain several deviations from the federal act that trigger preemption.

The first difference, and probably the most important, is that the Alaska arbitration act does not apply to a labor-management contract unless the act

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* This project was written and prepared by Missouri Law Review candidates under the direction of Associate Editor in Chief Richard C. Petrofsky.
4. Id.
5. Id. at 15.
6. Sections 1 and 2, which set forth the types of arbitration agreements that will be enforced under the FAA, will be binding on state courts. Section 3 and 4, however, are inapplicable. 465 U.S. at 16 n.10. Sections 5 through 13 contain procedural provisions that may or may not apply to state courts. See Note, Federal Preemption of Arbitration, 1984 Mo. J. Dispute Resolution 193.
7. See Note, supra n. 6.
is included in the contract or the contract provides for its application. The FAA, by contrast, does not exclude labor-management contracts from its coverage. Consequently, the FAA preempts the Alaska statute so that such contracts are now included within the scope of arbitration law.

A second difference between the Alaska act and the FAA is that the Alaska act permits the exercise of arbitration powers by a majority of the arbitrators. Because the FAA does not contain a similar provision, this section of the Alaska act may be preempted by the FAA.

Differences also exist between the FAA provisions for vacating an award and provisions on the same topic included in the Alaska act. The FAA permits vacation when the arbitrators exceed their powers or if the arbitrators "[s]o imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." Under the Alaska arbitration act, an award may be vacated if the arbitrators exceed their powers but not if the arbitrators imperfectly execute that power. Another difference is that the FAA does not contain language similar to § 09.43.120(a)(5) or § 09.43.120(b) of the Alaska law. Finally, the FAA permits vacation when a party's rights are prejudiced under 9 U.S.C. § 10(c) while the Alaska law requires that a party's rights be substantially prejudiced in its comparable provision contained in § 09.43.120(a)(4).

Arizona

Arizona's arbitration act is substantially similar to the UAA. Although the Arizona act is also relatively similar to the FAA, the Arizona statute


11. Alaska Stat. § 09.43.040 (1983) provides that "[t]he powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by AS 09.43.010-09.43.180." The Uniform Arbitration Act also permits a majority of the arbitrators to exercise power. UAA § 4 (1955).

12. 9 U.S.C § 10(d) (1982). The UAA does not contain similar language.


14. Alaska Stat. § 09.43.120(a)(5) (1983) provides: [T]here was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection. The UAA contains similar language in § 12(a)(5).

15. Alaska Stat. § 09.43.120(b) (1983) provides: "[t]he fact that the relief is such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award. The UAA contains similar language in § 12(a)(5).

16. Alaska Stat. § 09.43.120(a)(4) (1983) provides: "[t]he arbitrators refused to postpone the hearing upon sufficient cause being shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party." The UAA contains similar language in § 12(a)(4).

does contain several deviations from the federal act that trigger preemption.

For instance, under the Arizona law, arbitration agreements between employers and employees are exempted from coverage.\(^{18}\) The FAA contains no such exemption and consequently preempts Arizona law.

Arizona law permits a majority of arbitrators to exercise power.\(^ {19}\) The FAA does not contain a similar provision. Accordingly, the Southland\(^ {20}\) decision dictates that the FAA control so that a majority of arbitrators should not be allowed to exercise power.

Arizona's requirements for vacating arbitration awards differ from those of the FAA. The Arizona act requires that a party's rights be *substantially* prejudiced before vacation is permissible.\(^ {21}\) The FAA omits the word substantially in its comparable provision.\(^ {22}\) The Arizona act, like the FAA, allows vacation when the arbitrators have exceeded their powers.\(^ {23}\) However, the FAA also permits vacation when the arbitrators imperfectly exercise their powers.\(^ {24}\) Another difference between the Arizona law and the FAA appears in ARIZ. REV. STAT. ANN. § 12-1512(5).\(^ {25}\) The FAA does not contain comparable language and therefore may preempt this section of the Arizona arbitration act.

**Arkansas**

The Arkansas arbitration act\(^ {26}\) excludes from coverage personal injury or tort matters and "any insured or beneficiary under any insurance policy or annuity contract."\(^ {27}\) None of these exclusions appears in the FAA.

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18. *Id.*
21. ARIZ. REV. STAT. ANN. § 12-1512(A)(4) (1982) provides: "[t]he arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 12-1505, as to prejudice substantially the rights of a party." The UAA contains similar language in § 12(a)(4).
22. 9 U.S.C § 10(c) (1982).
24. 9 U.S.C. § 10(D) (1982) provides: "[w]here the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made."
25. ARIZ. REV. STAT. ANN. § 12-1512(5) (1982) provides:
There was no arbitration agreement and the issue was not adversely determined in proceedings under § 12-1502 and the adverse party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.
27. The Arkansas statute provides in pertinent part: "[t]his Act [Secs. 34-511 to 532] shall have no application to personal injury or tort matters, employer-employee
The Arkansas arbitration act permits a majority of the arbitrators to exercise power. Because the FAA does not permit such an exercise of power, this part of the Arkansas act is preempted by federal law.

The FAA also preempts Arkansas law in the area of vacation of arbitration awards. The Arkansas statutes do not contain the language concerning imperfect execution of powers that appears in the FAA. The Arkansas law also requires that party's rights be prejudiced. Also, ARK. STAT. ANN. § 34-522(5) is preempted by the FAA because the FAA does not contain a similar provision.

Colorado

Colorado's arbitration act permits a majority of the arbitrators to exercise power while the FAA does not. Thus, the Southland decision preempts that part of the Colorado law.

The Colorado act also differs from the FAA in the area of vacation of arbitration awards. Under the Colorado act vacation is permitted when the arbitrators exceed their powers but not in the additional circumstances out-

disputes, nor to any insured or beneficiary under any insurance policy or annuity contract." Id. at § 34-511. The UAA does not contain similar language.

28. The Arkansas statute provides that "[t]he powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this act." ARK. STAT. ANN. § 34-514 (Supp. 1985). The UAA contains similar language in § 4.


30. ARK. STAT. ANN. § 34-522(a)(4) (Supp. 1985) provides: "[t]he arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 5 [§ 34-515] as to prejudice substantially the rights of a party." The UAA contains similar language in § 12(a)(4).

31. ARK. STAT. ANN. § 34-522(5) (Supp. 1985) provides: There was no arbitration agreement and the issue was not adversely determined in proceedings under Section 2 [§ 34-512] and the party did not participate in the arbitration hearing without raising the objection; [b]ut the fact that the relief was such that it could not or would not be granted by a Court of law or equity is not ground for vacating or refusing to confirm the award.

Id. The UAA contains similar language in § 12(a)(5).


33. Id. at § 13-22-206 provides that "[t]he powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this part 2." The UAA contains similar language in § 4.


lined in 9 U.S.C. § 10(d). 36 Colorado law also requires substantial prejudice to a party's rights 37 while the FAA requires merely prejudice. Finally, the Colorado arbitration law allows vacation in language contained in Colo. REV. STAT. § 13-22-214(1)(a)(V) 38 and § 13-22-214(1)(b). 39 No similar language is included in the FAA. Thus, Colorado law is preempted by the FAA in these aspects of vacation of arbitration awards.

Delaware

The Delaware arbitration act, 40 based on the UAA, 41 differs from the FAA in several substantive respects. The primary difference between the two acts relates to the coverage of each. The Delaware act covers a broader range of agreements than is covered under the FAA. The FAA applies only to arbitration provisions contained in maritime transactions or in contracts involving commerce. 42 Moreover, the FAA is specifically limited to contracts entered into after January 1, 1926. 43 The Delaware act contains no such limitations and provides that any written agreement to submit to arbitration is enforceable under that state's act. 44 The Delaware act also specifically applies to arbitration clauses contained in contracts of the state and its municipalities. 45

The Delaware act applies to all arbitration agreements between employers and employees 46 with one major exception for collective bargaining labor contracts. 47 The FAA, on the other hand, covers all employment contracts

36. See 9 U.S.C § 10(D) (1982).
37. Colo. Rev. Stat. § 13-22-214(1)(a)(IV) (1985) provides: "[t]he arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 13-22-207, as to prejudice substantially the rights of a party." The U.A.A contains similar language in § 12(a)(4).
39. Colo. Rev. Stat. § 13-22-214(1)(b) (Supp. 1985) provides: "[n]otwithstanding the provisions of paragraph (a) of this subsection (1), the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award." The U.A.A contains similar language in § 12(a)(5).
41. The Delaware Uniform Arbitration Act is identical in all substantive respects to the UAA.
43. Id. § 14.
45. Id. §§ 5723, 5724.
46. Id. § 5701.
47. Id. § 5725.
except contracts of employment of seaman, railroad employees, or any other class of workers engaged in foreign or interstate commerce. Even after the exceptions, many employment contract arbitration agreements would be covered by both the FAA and the state arbitration statute.

Although appointment of arbitrators is virtually identical under both acts, the FAA specifies that unless otherwise agreed, the arbitration shall be conducted by a single arbitrator. The Delaware act states that the court shall appoint one or more arbitrators and that the majority of arbitrators will govern any action to be taken.

Finally, Delaware's act contains several provisions for which there are no corresponding provisions in the FAA. For example, § 57180 of the Delaware act provides that a confirmed award shall become a lien on all real estate of the debtor in the county where the arbitration award was made. The act also contains a provision dealing with the death or incompetency of a party to the arbitration. In all other respects the acts are similar.

**District of Columbia**

The District of Columbia virtually adopted the UAA. The main difference between the FAA and the District of Columbia's arbitration act is the agreements which each act covers. The FAA is limited to transactions involving maritime matters and to contracts which involve commerce. In addition, the FAA is specifically limited to contracts entered into after January 1, 1926. The D.C. act applies to all written agreements which contain arbitration provisions. Moreover, the two acts have different provisions concerning their application to employment contracts. Section 1 of the FAA excludes from coverage contracts of employment involving seamen, railroad employees, or workers engaged in interstate commerce. In contrast, § 16-4301 of the D.C. act specifically provides that the act extends to contracts between employers and employees or between their representatives.

Although the appointment of arbitrators is similar under both acts, the FAA provides that unless otherwise agreed, a single arbitrator shall conduct

49. Id. § 5.
51. Id. § 5705.
52. Id. § 5718.
53. Id. § 5722.
56. Id. § 14.
the arbitration. The D.C. act specifies that the court shall appoint one or more arbitrators and that a majority will control any action taken.

Finally, the D.C. act contains some provisions for which there are no corresponding provisions in the FAA. Section 16-4302 provides for a stay of arbitration on a showing that there is no agreement to arbitrate. The D.C. act also establishes requirements for awards and permits the arbitrator to change the award. There are no similar provisions under the FAA.

**Florida**

Florida has substantially adopted the UAA. The primary difference in the FAA and the Florida arbitration code is the agreements covered by each. The Florida code covers all written agreements containing provisions to submit any controversy to arbitration, provided that the parties have not stipulated that the state statute will not govern. The FAA, on the other hand, applies only to arbitration provisions contained in maritime transactions or in contracts involving commerce, and is specifically limited to contracts executed after January 1, 1926. However, because of the broad applicability of the state code and the inclusive nature of the FAA limitations, most arbitration agreements will be covered by both acts.

The Florida act contains a provision for an umpire in addition to arbitrators. The umpire has the same powers as the arbitrator but would not be counted in the making of the award unless the arbitrators failed to agree. The FAA specifies that unless otherwise agreed, the arbitration shall be conducted by a single arbitrator. In addition to an umpire, the Florida code refers to the appointment of arbitrators and provides that a majority of the arbitrators will control. Under the FAA, there is no mention of the use of such umpires in the arbitration.

The Florida act also provides for a stay of arbitration on a showing that there is no agreement to arbitrate; establishes the requirements for awards;

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62. Id. § 16-4304.
63. Id. § 16-4302.
64. Id. § 16-4309.
66. Id. § 682.02.
68. Id. § 14.
72. Id. § 682.05.
73. Id. § 682.03.
74. Id. § 682.09.
and permits the arbitrator to change the award.\textsuperscript{75} No such provisions are contained in the FAA.

The final inconsistency is that the state act contains a severability provision. If a provision is found invalid then it will not affect the application of any of the other state act provisions.\textsuperscript{76} Moreover, the severability provision provides that any section of the act is to be classified as substantive for conflict of laws purposes and would thus be applicable in other states.\textsuperscript{77}

\textit{Idaho}

The Idaho Uniform Arbitration Act is identical to the UAA except the Idaho act does not adopt the final three sections of the UAA.\textsuperscript{78} The major difference between the Idaho act and the FAA is in the agreements covered by each act. The FAA is limited to transactions involving maritime matters and to contracts that involve commerce\textsuperscript{79} and which are executed after January 1, 1926.\textsuperscript{80} The Idaho act covers all written agreements which contain arbitration clauses.\textsuperscript{81} Moreover, the Idaho act is much broader in its coverage of employment contracts. The Idaho act applies to all agreements between employers and employees unless otherwise provided.\textsuperscript{82} Under the FAA, contracts of employment involving seamen, railroad employees, or workers engaged in interstate commerce are excluded from coverage.\textsuperscript{83} Due to the inclusive nature of any limitations, however, most arbitration agreements will be covered by both acts.

The Idaho act contains several provisions for which there are no corresponding FAA provisions. Section 7-902 of the Idaho act provides for a stay of arbitration upon a showing that there was no agreement to arbitrate.\textsuperscript{84} The act also establishes requirements for awards\textsuperscript{85} and permits the arbitrator to change the award.\textsuperscript{86}

Finally, the FAA states that unless otherwise agreed, the arbitration shall be conducted by a single arbitrator.\textsuperscript{87} The Idaho code refers to the appointment of one or more arbitrators\textsuperscript{88} with the majority to govern any action to be taken.\textsuperscript{89} In all other substantive respects, the two acts are similar.

\textsuperscript{75} Id. § 682.10.
\textsuperscript{76} Id. § 682.22.
\textsuperscript{77} Id.
\textsuperscript{78} Idaho Code §§ 7-901 to -922 (1978).
\textsuperscript{80} Id. § 14.
\textsuperscript{81} Idaho Code § 7-901 (1978).
\textsuperscript{82} Id.
\textsuperscript{83} 9 U.S.C. § 1 (1982).
\textsuperscript{84} Idaho Code § 7-902 (1978).
\textsuperscript{85} Id. § 7-908.
\textsuperscript{86} Id. § 7-909.
\textsuperscript{88} Idaho Code § 7-903 (1978).
\textsuperscript{89} Id. § 7-904.
Illinois

Illinois has adopted an arbitration act substantially similar to the UAA. The Illinois act provides that written agreements to submit to arbitration are "valid, enforceable and irrevocable save upon such grounds as exist for the revocation of any contract." This language is similar to that used in § 2 of the FAA; however, Illinois does not limit the application of its arbitration act to contracts involving interstate commerce or maritime transactions.

The AAA might preempt three provisions of the Illinois arbitration act. The Illinois act provides as follows:

[any agreement between a patient and a hospital or health care provider to submit to binding arbitration a claim for damages arising out of (1) injuries alleged to have been received by a patient, or (2) death of a patient, due to hospital or health care provider negligence or other wrongful act, but not including intentional torts, is also subject to the Health Care Arbitration Act.]

To the extent that this exception creates an additional burden or limitation on the enforceability of arbitration agreements, it would be preempted by the AAA for arbitration agreements within the federal act.

The Illinois act outlines the procedures for the appointment of arbitrators and provides that "if the method of appointment of arbitrators is not specified in the agreement and cannot be agreed upon by the parties, the entire arbitration agreement is terminated." The FAA provides for appointment of arbitrators by the court if a method is not specified in the agreement or if the method agreed upon fails. The Illinois code section permitting termination of the agreement is in direct conflict with the FAA and therefore would be preempted by the federal act if the arbitration clause fell within its provisions.

The third limitation imposed by the Illinois legislature provides that the act applies only to agreements made subsequent to August 24, 1961. It is possible that the AAA would preempt the Illinois statute if the enforcement of an applicable arbitration agreement would otherwise be prevented.

Illinois has several provisions in its arbitration act which are not con-
tained within the FAA including: conduct of hearings,\textsuperscript{97} representation by an
attorney,\textsuperscript{98} the use of depositions,\textsuperscript{99} fees and expenses,\textsuperscript{100} venue,\textsuperscript{101} appeals,\textsuperscript{102}
and severability.\textsuperscript{103} These provisions will probably be given effect by the state
courts regardless of whether the FAA applies, because they do not limit the
enforceability of arbitration agreements.\textsuperscript{104}

\textit{Indiana}

The Indiana Uniform Arbitration Act\textsuperscript{105} provides that written agreements
to submit to arbitration are "valid and enforceable save upon such grounds
as exist at law or in equity for the revocation of any contract."\textsuperscript{106} The FAA
utilizes similar language, but imposes an additional requirement that the
contract involve an interstate commerce or maritime transaction.\textsuperscript{107} The In-
diana act provides specifically that it "applies to arbitration agreements
between employers and employees or between their respective representatives
(unless otherwise provided in the agreement)."\textsuperscript{108}

The Indiana act "specifically exempts from its coverage all consumer
leases, sales and loan contracts."\textsuperscript{109} The FAA does not contain any similar
limitation. The FAA would preempt this state exception with regard to ap-
licable contracts because the limitation would constitute an impermissible
additional burden on the enforceability of arbitration agreements.

The Indiana act outlines the circumstances under which a court may
stay arbitration:

If the court determines that there are other issues between the parties which
are not subject to arbitration and which are the subject of a pending action
... and that a determination of such issues is likely to make the arbitration
unnecessary, the court may delay its order to arbitrate until the determination
of such other issues.\textsuperscript{110}

\textsuperscript{97} ILL. ANN. STAT. (same as section 5 of the UAA).
\textsuperscript{98} Id. § 106 (same as § 6 of the UAA).
\textsuperscript{99} Id. § 107 (same as § 7 of the UAA).
\textsuperscript{100} Id. § 110 (same as § 10 of the UAA).
\textsuperscript{101} Id. § 117 (same as § 18 of the UAA).
\textsuperscript{102} Id. § 118 ("appeals may be taken in the same manner, upon the same
terms, and with like effect as in civil cases"). UAA § 19 outlines the specific orders
and judgments from which an appeal may be taken.
\textsuperscript{103} ILL. ANN. STAT. ch. 10, § 121 (Smith-Hurd 1975 & Supp. 1985) (same as
§ 22 of the UAA).
\textsuperscript{104} See, Southland v. Keating, 465 U.S. 1 (1984); Note, supra note 6, at 196.
\textsuperscript{105} IND. CODE ANN. §§ 34-4-2-1 to -2-22 (Burns 1973 & Supp. 1985).
\textsuperscript{106} Id. § 34-4-2-1 (follows the language of § 1 of the UAA).
\textsuperscript{108} IND. CODE ANN. § 34-4-2-1 (Burns 1973 & Supp. 1985) (same as § 1 of
the UAA).
\textsuperscript{109} Id. § 34-4-2-1(b). The UAA does not contain any similar exception.
\textsuperscript{110} Id. § 34-4-2-3. The UAA does not provide any similar reason for a stay
The FAA does not offer any similar grounds for staying or delaying arbitration. Although this section appears procedural, it is possible this provision could be viewed as contrary to the "national policy favoring arbitration." The Indiana statute also includes a section which provides that the act "applies only to agreements made subsequent to August 18, 1969." The FAA applies to agreements made after January 1, 1926. It is possible that the FAA would preempt the state statute if the longer time period provided under the federal act would allow an otherwise valid arbitration agreement to be enforced. "In creating a substantive rule applicable in state as well as federal courts, Congress intended to foreclose state legislative attempts to undercut the enforceability of arbitration agreements."

The Indiana Arbitration Act has several provisions not contained in the FAA. Some of the additional areas include: conduct of the hearing, representation by an attorney, use of depositions, fees and expenses, venue and appeals. These sections appear to be procedural provisions, and they should not be preempted as long as they do not "create an obstacle to... the national policy favoring arbitration."

Kansas

The Kansas Uniform Arbitration Act provides that written agreements to submit to arbitration are "valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract." This language is also used in § 2 of the FAA.

or delay of arbitration.

115. *IND. CODE ANN.* § 34-4-2-6 (Burns 1973 & Supp. 1985). This section is similar to § 5 of the UAA, however, it requires thirty days notice prior to the hearing, it allows a party to "require that the hearing be recorded in a manner sufficient for appeal," and does not specifically provide for the right to cross-examine witnesses appearing at the hearing. *Id.*
116. *Id.* § 34-4-2-7 (same as § 6 of the UAA).
117. *Id.* § 34-4-2-8. This section on depositions is similar to § 7 of the UAA. With regard to subpoenas, however, the Indiana statute excludes subpoenas "for the production of the financial books, financial records or documents pertaining to the income or financial condition of the other party" in matters of arbitration between labor and management. *Id.*
118. *Id.* § 34-4-2-11 (similar to § 10 of the UAA).
119. *Id.* § 34-4-2-18 (similar to § 18 of the UAA).
120. *Id.* § 34-4-2-19 (same as § 19 of the UAA).
121. Note, *supra* note 6, at 196.
123. *Id.* § 5-401. UAA § 1 utilizes the same language.
however, does not limit its application to contracts involving interstate commerce or maritime transactions.¹²⁴

The Kansas legislature imposed several limitations on the validity and application of their arbitration act. The Kansas act specifically exempts insurance contracts from the coverage of the act.¹²⁵ These sections should not be preempted by the FAA because the McCarran-Ferguson Act provides that "[n]o Act of Congress shall be construed to invalidate, impair or supersede any law enacted by any state for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance . . ."¹²⁶

The Kansas act also excludes contracts "between an employer and employees or between their respective representatives" from its definition of valid and enforceable arbitration agreements.¹²⁷ The FAA specifically exempts "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."¹²⁸ Assuming that a particular contract is subject to the FAA, the employment contract exclusion adopted by Kansas might be preempted to the extent that it is broader than the FAA exemption. The states cannot impose additional limits on the enforceability of arbitration clauses which are subject to the FAA.¹²⁹

Kansas also excludes claims in tort from coverage under the arbitration act.¹³⁰ If the contract containing the arbitration agreement is subject to the FAA and the clause itself is broad enough to cover the claim, the FAA will preempt the state statute and require the court to enforce the arbitration agreement.¹³¹

The Kansas statute provides that "this act applies only to agreements made subsequent to the taking effect of this act" on July 1, 1973.¹³² The FAA provides that it "shall not apply to contracts made prior to January 1, 1926."¹³³ The Kansas statute would probably be preempted if the contract

¹²⁴ The UAA does not limit its application to contracts involving interstate commerce or maritime transactions.

¹²⁵ KAN. STAT. ANN. §§ 5-401 to -419 (1982). The UAA does not exclude insurance contracts from its coverage.


¹²⁷ KAN. STAT. ANN. § 5-401 (1982). Section 1 of the UAA specifically includes "arbitration agreements between employers and employees or between their respective representatives (unless otherwise provided in the agreement)." UAA § 1 (1955).


¹³⁰ KAN. STAT. ANN. § 5.401 (1982). The UAA does not exclude tort claims from its coverage.

¹³¹ Note, supra note 6, at 197-98.

¹³² KAN. STAT. ANN. § 5-419 (1982). Section 20 of the UAA utilizes the same language.

was subject to the FAA and was entered into within the time permitted by the federal act. "In creating a substantive rule applicable in state as well as federal courts, Congress intended to foreclose state legislative attempts to undercut the enforceability of arbitration agreements."134

The Kansas Uniform Arbitration Act has several provisions not contained within the FAA; these areas include: conduct of hearings,135 representation by an attorney,136 use of depositions,137 fees and expenses,138 venue,139 appeals,140 and severability.141 It is likely that these provisions could be given effect even if the arbitration agreements are subject to the FAA because they are largely procedural and do not appear to inhibit "the national policy favoring arbitration."142

Maine

The Maine Uniform Arbitration Act143 provides that a written agreement to submit to arbitration is "valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract."144 This is the same language as that found in the FAA.145 Unlike the federal act, however, Maine neither limits application of its act to contracts involving interstate commerce or maritime transactions, nor does it exclude any classes of employment contracts.146

The Maine Arbitration Act provides that it "shall not apply to any provision contained in a policy of automobile liability insurance for arbitration of a claim under the uninsured motorist coverage."147 Although this provision probably constitutes an "additional limitation" on the enforcea-

135. KAN. STAT. ANN. § 5-405 (1982- (follows the language of section 5 of the UAA, except the Kansas statute allows a party to make a special appearance at the hearing to "contest the sufficiency of notice").
136. Id. § 5-406 (same as § 6 of UAA).
137. Id. § 5-407 (similar to § 7 of UAA, except that the Kansas statute does not expressly limit depositions "for use as evidence . . . of a witness who cannot be subpoenaed or is unable to attend the hearing").
138. Id. § 5-410 (same as § 10 of UAA).
139. Id. § 5-417 (same as § 18 of UAA).
140. Id. § 5-418 (same as § 19 of UAA).
141. Id. § 5-421 (same as the § 19 of UAA).
144. Id. § 5927.
146. ME. REV. STAT. ANN. tit. 14, § 5927 (1964) specifically provides that "this chapter also applies to arbitration agreements between employers and employees or between their respective representatives, unless otherwise provided in the agreement." This follows the same language of § 1 of the UAA.
147. Id. § 5948. The UAA does not contain a similar exception.
bility of arbitration agreements, it should not be preempted. This is because the McCarron-Ferguson Act provides that "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any state for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance."148

The Maine Arbitration Act also provides that "this chapter applies only to agreements made subsequent to October 7, 1967."149 The FAA, on the other hand, is applicable to contracts made subsequent to January 1, 1926.150 It is possible that the state statute would be preempted if the effective date of the Maine Arbitration Act was set up as a bar to enforcement of an arbitration clause within the provisions of the FAA. States cannot impose additional limits on the enforceability of arbitrations agreements subject to the FAA.151

There are several sections in the Maine arbitration act which are not contained in the FAA. Some of these include: conduct of the hearings,152 representation by an attorney,153 use of depositions,154 fees and expenses,155 venue156 and appeals.157 These areas focus primarily on the method of enforcement of arbitration agreements, and therefore should not be preempted by the FAA.158

Maryland

The Maryland Uniform Arbitration Act specifically states that the court should make any determination provided for without a jury.159 Under the FAA, the party alleged to be in default may demand a jury trial on the issue.160 The court then must refer this issue to a jury in the manner provided for by the Federal Rules of Civil Procedure, or specially call a jury for that purpose.161 The jury findings will direct that the arbitration proceedings be

153. Id. § 5932 (same as § 6 of the UAA).
154. Id. § 5933 (same as § 7 of the UAA).
155. Id. § 5936 (same as § 10 of the UAA).
156. Id. § 5944 (differs from § 18 of the UAA only in that it provides that "application shall be made to the Superior Court of the county").
157. Id. § 5945 (same as § 19 of the UAA).
158. See Note, supra note 6, at 196.
161. Id.
dismissed, or will direct the parties to proceed with the arbitration. 162 Under the Maryland Uniform Arbitration Act, these determinations are made by the court. 163

The Maryland act does not apply to arbitration between employers and employees unless it is specifically provided in the agreement. 164 The FAA does not apply to contracts of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce. 165 However, case law indicates that the FAA is, indeed, applicable to labor contracts which do not fall into these exceptions. 166

Both a stay of arbitration and a stay of proceedings are provided for in the Maryland Uniform Arbitration Act. 167 Section 3 of the FAA allows a stay of the proceedings if the court is satisfied that the issue involved is referable to arbitration under the agreement. 168 The stay can only be had when the "applicant for the stay is not in default in proceeding with such arbitration." 169 There is no reference in the FAA to a stay of arbitration. However, the FAA does provide for a stay of the proceedings when the disputed issue is referable to arbitration. 170

Massachusetts

Section 2 of the Massachusetts Uniform Arbitration Act allows the court to determine the issue of existence of an agreement to arbitrate. 171 The court may stay an arbitration proceeding if it finds that there is no agreement to arbitrate. 172 If an issue which is referable to arbitration is involved in a pending court proceeding, the aggrieved party may petition the court for an order directing arbitration. 173 Following the petition, the proceeding shall be stayed. 174 By contrast, the FAA provides for a jury to determine the existence

162. Id.
166. See, e.g., Evans v. Hudson Coal Co., 165 F.2d 970 (3rd Cir. 1948).
167. Md. Cts. & Jud. Proc. Code Ann. §§ 3-208 to -209 (1957). The UAA also provides for a stay of the arbitration and the proceedings in § 2(b) and (d), respectively.
169. Id.
170. Id.
173. Id. § 2(c).
174. Id. § 2(d).
of a valid agreement to arbitrate.\textsuperscript{175} While the FAA allows a stay of the proceedings when an issue therein is referable to arbitration, the FAA does not provide for a stay of arbitration.\textsuperscript{176}

\textit{Michigan}

The Michigan Arbitration Act does not apply to collective bargaining contracts between employers and employees which deal with terms or conditions of employment.\textsuperscript{177} The FAA specifically does not apply to "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."\textsuperscript{178}

Under Michigan law, if either party fails to appear for arbitration after due notice, the arbitrators can hear and determine the issue upon evidence presented by the other party.\textsuperscript{179} The language of the FAA seems to assume that both parties are present in the proceedings.\textsuperscript{180} Section 4 provides for five days notice in writing served on a party in default.\textsuperscript{181} After notice, the court shall hear the parties on the issue of an agreement to arbitration.\textsuperscript{182}

\textit{Minnesota}

Minnesota arbitration agreements apply to contracts between employers and employees.\textsuperscript{183} The FAA does not apply to contracts concerning employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.\textsuperscript{184}

The Minnesota law allows the court to decide whether there is a valid agreement to arbitrate.\textsuperscript{185} The FAA provides that a party may demand a jury trial as to this issue.\textsuperscript{186} While the Minnesota Arbitration Act provides for a stay of arbitration on a showing that there is no agreement to arbitrate,\textsuperscript{187}

\textsuperscript{176} Id. § 3.
\textsuperscript{177} Mich. Comp. Laws Ann. § 600.5001(3) (1963). The UAA does apply to arbitration agreements between employers and employees.
\textsuperscript{178} 9 U.S.C. § 1 (1982).
\textsuperscript{181} Id.
\textsuperscript{182} Id.
\textsuperscript{183} Minn. Stat. Ann. § 572.08 (West Supp. 1957). This is consistent with UAA § 1.
\textsuperscript{185} Minn. Stat. Ann. § 572.09 (West Supp. 1957). Section 2 of the UAA is virtually identical to the Minnesota Statute.
the FAA provides only for a stay of the proceedings when there is a petition to order arbitration.\footnote{188}

\textbf{Missouri}

The Missouri Uniform Arbitration Act\footnote{189} provides that written arbitration agreements are "valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract."\footnote{190} Similar language is used in the FAA.\footnote{191} The Missouri act, however, excludes arbitration of insurance contracts and adhesion contracts.\footnote{192} The FAA would not preempt Missouri's prohibition of arbitration under an insurance contract because such a preemption would amount to an invalidation of a "law enacted by [a] state for the purpose of regulating the business of insurance . . . ." and hence, contrary to the proposition enunciated in the McCarran-Ferguson Act.\footnote{193} Missouri's exclusion of adhesion contracts would presumably be preempted by the FAA, unless some ground could be found for the revocation of the agreement according to ordinary rules of contract law.

The Missouri act limits its applicability to "written agreements between commercial persons, or between such persons and those with whom they contract other than commercial persons."\footnote{194} The exclusion of contracts involving other than maritime transactions may be an area in which the FAA would preempt the Missouri act, since the effect serves to limit the scope of arbitrable agreements available under the FAA.

In addition, the Missouri act requires written notice that the contract contains an arbitration clause.\footnote{195} To the extent that an arbitration agreement subject to the FAA would not be enforced due to the lack of such a notice, that limitation would be preempted by the FAA.\footnote{196}

\footnote{188} 9 U.S.C. § 3 (1982).
\footnote{190} Id. § 435.350.
\footnote{192} Mo. Rev. Stat. § 435.350 (Supp. 1983). This provision does not, however, exempt contracts which warrant new homes against defects in construction from being considered adhesion contracts or insurance contracts for the purposes of the Missouri Act. Id.
\footnote{193} The McCarran-Ferguson Act provides that "[N]o Act of Congress shall be construed to invalidate, impair or supersede any law enacted by any state for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance . . . ." 15 U.S.C. §§ 1011-1015 (1982).
\footnote{194} Mo. Rev. Stat. § 435.465 (Supp. 1983). The UAA is not limited to transactions involving interstate commerce or maritime transactions.
\footnote{195} Id. § 435.460.
\footnote{196} If the FAA applies, it will preempt state statutes that not only forbid arbitration of specified subjects, but also those that hinder their enforcement.
The Missouri act contains provisions for venue and appeals procedure which are not found in the FAA. Presumably, these provisions would be given effect by state courts even though the arbitration agreement is subject to the FAA because they do not constitute an additional limitation to the enforceability of those agreements to arbitrate.

Nevada

The Nevada Uniform Arbitration Act provides that written arbitration agreements are "valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract." Though this same language is used in the FAA, the Nevada act, like the UAA, extends coverage beyond contracts involving interstate commerce or maritime transactions to contracts "between employers and employees or between their respective representatives unless otherwise provided in the agreement." Since this is not an imposition of restrictions on the enforceability of arbitration clauses which are subject to the FAA, this provision would not be preempted by the federal statute.

The Nevada act generally follows the FAA with a few exceptions. The Nevada act includes a provision for discovery which is absent in the FAA. Also included in the Nevada act are provisions for arbitration in cases of damages arising out of the "ownership, maintenance or use of a motor vehicle." Although not found in the FAA, these provisions would not be preempted since they do not create obstacles to the enforcement of arbitration clauses.

Also included in the Nevada act are guidelines for the establishment by district courts of a voluntary or mandatory program for the arbitration of civil disputes. This provision, although absent from the FAA, does not operate to restrict the enforceability of arbitration agreements and would therefore not be preempted.

New Mexico

The New Mexico Uniform Arbitration Act provides that a written agreement to submit disputes to arbitration is "valid, enforceable and irrev-
ocable, save upon such grounds as exist at law or in equity for the revocation of any contract. 4208 Though this same language is found in the FAA, 209 New Mexico does not limit the application of its act to contracts involving interstate commerce and maritime transactions, nor does it exclude any classes of employment contracts. 210 

The New Mexico act is substantially similar to the UAA, and neither provides that a party may demand a jury trial as to summary proceedings in the disposition of issues relating to the making or performance of an arbitration agreement, as does the FAA. 211 In addition, the New Mexico act provides for stays of arbitration, 212 establishes requirements for an award, 213 and permits arbitrators to change an award, 214 none of which are found in the FAA. However, it is likely that these provisions will be given effect in state courts as long as they do not create an obstacle to "the national policy favoring arbitration." 215

North Carolina

The North Carolina Arbitration Act 216 provides that written agreements to submit disputes to arbitration are "valid, enforceable and irrevocable except with the consent of all the parties, without regard to the justiciable character of the controversy." 217 Although this provision is similar to the FAA, 218 the North Carolina act does not limit its application to contracts involving interstate commerce and maritime transactions. 219 The North Carolina act provides two exceptions to which it will not apply: (1) Any agreement or provision to arbitrate in which it is stipulated that it will not apply and (2) Arbitration agreements between employers and employees or between their respective representatives, unless the agreement provides otherwise. 220 If the FAA were applicable to the arbitration agreement, the employment

208. Id. § 44-7-1.
210. The UAA does not limit its application to contracts involving interstate commerce or maritime transactions, and specifically states its applicability to employment contracts. UAA § 1 (1955).
213. Id. § 44-7-8.
214. Id. § 44-7-9.
217. Id. at § 1-567.2.
219. The UAA does not limit its application to contracts involving interstate commerce or maritime transactions.
220. N.C. Gen. Stat. § 1-567.2 (1983). The UAA § 1 specifically includes "arbitration agreements between employers and employees, or between their respective representatives, unless otherwise provided in the agreement." UAA § 1 (1955).
exclusion provision adopted by the North Carolina act might be preempted to the extent that it is broader than the FAA exemption which includes “contracts of employment of seamen, railroad employees or any other class of workers engaged in foreign or interstate commerce.” 221

The North Carolina act has several provisions not contained in the FAA. These provisions include: representation by an attorney, 222 fees and expenses, 223 and appeals procedure. 224 It is likely that these provisions would be given effect even if the arbitration agreement were subject to the FAA because they are largely procedural and do not appear to inhibit the enforceability of arbitration agreements.

Oklahoma

The Oklahoma Uniform Arbitration Act 225 does not apply “to collective bargaining agreements or contracts with reference to insurance except for those contracts between insurance companies.” 226 Both provisions are valid despite their limiting effect on arbitration agreements. The exemption for collective bargaining agreements is similar to language found in the FAA. 227 The insurance exemption remains valid under the McCarran-Ferguson Act, 228 which specifically leaves to states the business of regulating provisions in insurance contracts. 229

Unlike the FAA, the Oklahoma statute applies only to agreements made after Oct. 1, 1978. 230 The FAA applies to all contracts made since Jan. 1, 1926. 231 Because the Southland decision did not indicate whether the FAA

222. N.C. GEN. STAT. § 1-567.7 (1983).
223. Id. § 1-567.11.
224. Id. § 1-567.18.
226. Id. § 802. This language differs from that found in the UAA, which makes arbitration agreements in employment contracts valid and enforceable. See UAA § 1 (1955).
227. See supra note 6.
229. The McCarran-Ferguson Act was Congress’ response to United States v. South-Eastern Underwriters Ass’n, 322 U.S. 533 (1944). The act provides: “[N]o Act of Congress shall be construed to invalidate, impair, or supercede any law enacted by any state for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance . . . .” When state law does not preclude arbitration clauses in insurance contracts, the FAA would give effect to the clauses. Cf. Miller v. National Fidelity Life Ins. Co., 588 F.2d 185, 187 (5th Cir. 1979).
230. OKLA. STAT. ANN. tit. 15, § 818 (Supp. 1987). Oct. 1, 1978 was the effective date of the Act. This is consistent with language found in the UAA.
would preempt state procedural provisions, it remains unclear whether the FAA would apply to pre-1978 agreements.

**Pennsylvania**

The Pennsylvania Uniform Arbitration Act\(^{232}\) calls for statutory arbitration rules to apply only if "the agreement to arbitrate is in writing and expressly provides for" statutory arbitration.\(^{233}\) Otherwise, "an agreement to arbitrate a controversy on a nonjudicial basis shall be conclusively presumed to be an agreement to arbitrate" under common law arbitration rules.\(^{234}\) An exception to these rules occurs when the government is a party to a contract that calls for arbitration of controversies.\(^{235}\) In that case, statutory arbitration rules apply whether or not specific mention of such was made in the contract.\(^{236}\)

One other idiosyncrasy in the Pennsylvania statute calls for special judicial review of an award in three situations: first, if the commonwealth government is a party to arbitration; second, if any political subdivision submits to arbitration a controversy with employees; and third, if the law requires any person to submit a controversy to arbitration.\(^{237}\) In each case, the court must review the award and modify or correct it if, had it been a jury verdict, the court would have entered a different judgment or a judgment notwithstanding the verdict.\(^{238}\)

\(^{232}\) 42 PA. CONS. STAT. ANN. §§ 7301-7320 (Purdon 1982).

\(^{233}\) Id. § 7302(a).

\(^{234}\) Id. The common law arbitration rules are codified at 42 PA. CONS. STAT. ANN. §§ 7341-7342 (Purdon 1982). Section 7341 states:

> The award of an arbitrator in a nonjudicial arbitration which is not subject to Subchapter A (relating to statutory arbitration) or a similar statute regulating nonjudicial arbitration proceedings is binding and may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.

\(^{235}\) Id. Judicial review of an arbitration award under common law rules is more narrow than under the statutory rules, which are modeled after the UAA. Presumably the common law arbitration rules still would apply after Southland, given the national policy in favor of enforcement of arbitration agreements.

\(^{236}\) Id. § 7302(c) (Purdon 1982).

\(^{237}\) Id. § 7302(d). The UAA has no similar provision.

\(^{238}\) Id. Modification or vacation of the award is mandated when the award is issued due to the arbitrator's misapplication of the law. See Ragin v. Royal Globe Ins. Co., 315 Pa. Super. 179, 461 A.2d 856 (1983). Since the review called for in this section is of the award and not of the actual agreement to arbitrate, there remains some question whether the FAA would preempt this provision in a state arbitration act. At least one court says "no." See Hilton Constr. Co. v. Martin Mechanical
South Carolina

The South Carolina Uniform Arbitration Act calls for enforcement of arbitration agreements, but only if a prominently-displayed notice warns contracting parties of the binding effect of arbitration clauses. Since absence of the required notice would render the arbitration clause unenforceable, this provision would not be upheld in contracts involving interstate commerce.

The act also is inapplicable to "pre-agreements" entered into between lawyers and clients or doctors and patients. Although this clause limits the enforceability of arbitration agreements, at least one case held that the practice of medicine falls outside the commerce clause. Thus, the FAA would not take precedent over this state provision.

The act does not apply to personal injury claims, whether based on contract or tort, or to any insured or beneficiary under any insurance policy or annuity contract. If the personal injury claim arose under a contract involving interstate commerce with an arbitration clause broad enough to cover the claim, arbitration would be available under the FAA. If the claim was based on tort, the FAA would not preempt the provision. The insurance exemption remains valid under the McCarran-Ferguson Act, which specifically leaves to states the business of regulating provisions in insurance contracts.

240. Id. § 15-48-10(a). The notice provision states: "Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration." Id. Missouri and Texas have similar provisions. See Mo. REV. STAT. § 435.460 (Supp. 1985); Tex. REV. CIV. STAT. ANN. art. 224-1 (Vernon Supp. 1987). The UAA contains no similar language.
241. Cf. Collins Radio Co. v. Ex-Cell-O Corp., 467 F.2d 995, 998-99 (8th Cir. 1972) (refusing to apply Texas statute requiring an arbitration clause be signed by the parties' attorneys before it is valid).
245. Since the FAA applies to contracts relating to interstate commerce, it also could possibly apply to personal injury claims arising under such a contract despite contrary language in the state statute.
246. The FAA applies only to contracts relating to interstate commerce and maritime transactions. 9 U.S.C. § 2 (1982). Thus, it would not preempt a state statute concerning personal injury claims based on tort.
247. See supra note 229.
Unlike the FAA, the South Carolina statute applies only to agreements made after May 8, 1978.248 The FAA applies to all contracts made since Jan. 1, 1926.249 Because the Southland decision did not indicate whether the FAA would preempt state procedural provisions, it remains unclear whether the FAA would apply to pre-1978 agreements.

**South Dakota**

The South Dakota Uniform Arbitration Act 250 provides that arbitration agreements are valid, enforceable and irrevocable, including agreements between employers and employees.251 Although the FAA does not apply to certain types of employment contracts, the more inclusive state act should control as a matter of public policy.

The South Dakota act applies only to agreements made subsequent to June 30, 1971,252 while the FAA applies to all contracts made since Jan 1, 1926.253 The Southland decision did not make clear whether this FAA provision would preempt state law.

The South Dakota act does not apply to insurance policies, and makes all arbitration clauses in insurance policies void and unenforceable.254 This exemption is valid, since the McCarran-Ferguson Act leaves to states the business of regulating provisions in insurance contracts.255

**Tennessee**

The Tennessee Uniform Arbitration Act256 provides that written agreements to submit to arbitration are “valid, enforceable and irrevocable save upon such grounds as exist at law or in equity for the revocation of any contract.”257 This is the same language as that used in § 2 of the FAA. Tennessee, however, does not limit the application of its arbitration act to contracts involving interstate commerce or maritime transactions.258

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251. *Id.* § 21-25A-1. The UAA contains similar language.
255. *See supra* note 229.
257. *Id.* § 29-5-302(a). Section 1 of the UAA utilizes the same language. UAA § 1 (1955).
258. The UAA does not limit its application to contracts involving interstate commerce or maritime transactions.
The Tennessee act imposes an additional requirement on some arbitration agreements: "for contracts relating to farm property, structures or goods, or to property and structures utilized as a residence of a party, the clause providing for arbitration shall be additionally signed or initialed by the parties."259 This limitation would be preempted if the contract fell within the provisions of the FAA. A state court could not hold that the lack of additional signatures or initials barred enforcement of the arbitration agreement.260

The Tennessee act contains several provisions not covered by the FAA. These provisions focus primarily on methods of enforcement and include: conduct of hearings,261 representation by an attorney,262 use of depositions,263 venue264 and the right of appeal.265 Presumably, these state provisions would be given effect by the state courts even if the arbitration clause is subject to the FAA because they do not constitute an additional limitation to the "broad principle of enforceability."266

Texas

The Texas Arbitration Act267 does not apply to collective bargaining agreements between an employer and a labor union.268 The FAA does not apply to contracts for employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.269

In Texas state court, no agreement shall be arbitrated unless notice that the contract is subject to arbitration is typed in underlined capital letters, or rubber-stamped prominently on the first page of the contract.270 There is no such language in the FAA, which requires only a written provision to settle a controversy by arbitration.271

Article 225 of the Texas General Arbitration Act allows the court to

259. TENN. CODE ANN. § 29-5-302(a) (Supp. 1986). The UAA does not require that arbitration clauses be additionally signed or initialed.
262. Id. § 29-5-307 (follows the exact language of § 6 of the UAA).
263. Id. § 29-5-308(b) (follows the exact language of UAA § 7(b) (1955)).
264. Id. § 29-5-318 (follows the exact language of UAA § 18 (1955)).
265. Id. § 29-5-319 (follows the exact language of UAA § 19 (1955)).
267. TEX. REV. CIV. STAT. ANN. art. 224 to 386 (Vernon 1973).
268. Id. art. 224 (Vernon 1973). Section 1 of the UAA indicates that it applies to employment contracts. UAA § 1 (1955).
270. TEX. REV. CIV. STAT. ANN. art. 224-1 (Vernon Supp. 1987). This requirement is not included in the UAA.
summarily determine the issue of a valid agreement to arbitrate.\(^{272}\) Under the FAA, the defaulting party may request a jury for this determination.\(^{273}\) The Texas act provides for both a stay of arbitration and a stay of the proceedings when there is a question of arbitrability.\(^{274}\)

**Wyoming**

The Wyoming Uniform Arbitration Act\(^{275}\) provides for the enforcement of a written agreement to submit any existing or future controversy to arbitration, including arbitration agreements between employers and employees.\(^{276}\) The FAA does not apply to certain types of employment contracts, so the state act presumably would control.\(^{277}\) The Wyoming act is, otherwise, substantively consistent with the FAA.

**Conclusion**

The Supreme Court did not outline all of the implications of its decision in *Southland*; however, the Court clearly announced a policy favoring enforcement of arbitration agreements.\(^{278}\) The Court held further that they could find "nothing in the [FAA] indicating that the broad principle of enforceability is subject to any additional limitations under State law."\(^{279}\) The extent of preemption remains to be determined by the courts, but it is important that attorneys review and be aware of the potential areas of their state acts which may be superceded by the FAA.

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276. Id. § 1-36-103. The UAA contains similar language.
277. See supra note 229.
279. Id. at 11.