

HCS FOR HB 1718 -- ARBITRATION AGREEMENTS

SPONSOR: Corlew

COMMITTEE ACTION: Voted "Do Pass with Amendments" by the Standing Committee on Workforce Standards and Development by a vote of 6 to 2. Voted "Do Pass with HCS" by the Select Committee on Labor and Industrial Relations by a vote of 7 to 3.

This bill provides that in arbitration agreements between an employer and an at-will employee the arbitrator must make all initial decisions as to arbitrability, including deciding whether the parties have agreed to arbitrate, whether the arbitration agreement is enforceable, and whether specific claims are arbitrable. The arbitrator or arbitrators will be selected by mutual agreement of the parties or, if no mutual agreement, by a strike and ranking process. Any modification to the arbitration agreement shall not allow unilateral modification of the arbitration agreement. The bill establishes certain criteria for when the arbitrator must determine that the arbitration agreement is valid. On motion by a party showing an arbitration agreement between an employer and an at-will employee that does not expressly delegate the issue of arbitrability to the court, the court must stay any action before the court and order the parties to proceed to arbitration. The provisions of this bill do not apply to or affect enforceability of arbitration provisions in collective bargaining agreements.

This bill is similar to HB 928 (2015).

PROPOSERS: Supporters say that this would be an efficient process. This takes decisions of initial arbitrability away from the courts and puts it in the hands of arbitrators, and the same remedies available in the court system would be available through the arbitration process.

Testifying for the bill were Representative Corlew; Janet Mark, Hallmark Cards Incorporated; Kansas City Power and Light; Cerner Corporation; Je Dunn Construction; Missouri Retailers Association; Missouri Chamber Of Commerce; Greater Kansas City Chamber of Commerce; and Associated Industries Of Missouri.

OPPOSERS: Those who oppose the bill say that because this is private arbitration, it would be prohibitively expensive. It is not the same as filing a lawsuit and then going through public arbitration. Opponents also say that it is a bad idea to designate the decision of initial arbitrability to the arbitrators, because it would be in the best interest of the arbitrator to determine that an issue is arbitrable. Litigation is more expensive through

arbitration, so it is not a fair system. Opponents also say that some employers have tied their employees' hands by forcing them to agree to arbitration if they want to be eligible for promotions and pay increases.

Testifying against the bill were Benjamin Westhoff; Lynne Bratcher, Missouri Association of Trial Attorneys; Empower Missouri; Missouri NAACP; and Missouri National Education Association.