

SECOND REGULAR SESSION

HOUSE BILL NO. 1402

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DEGROOT.

4903H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 435.350, 435.355, and 435.440, RSMo, and to enact in lieu thereof three new sections relating to arbitration agreements.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 435.350, 435.355, and 435.440, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 435.350, 435.355, and 435.440, to read as follows:

435.350. **1.** A written agreement to submit any existing controversy to arbitration or a provision in a written contract, except contracts of insurance and contracts of adhesion, to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. [~~Contracts which warrant new homes against defects in construction and reinsurance contracts are not "contracts of insurance or contracts of adhesion" for purposes of the arbitration provisions of this section.~~]

2. With respect to agreements between an employer and at-will employee or between a patient and a health care provider to submit to arbitration certain controversies thereafter arising between the parties, except in cases where the agreement expressly and unequivocally delegates the issue of arbitrability to the court, the arbitrator, and not the court, shall make all initial decisions as to arbitrability including, but not limited to, deciding whether the parties have agreed to arbitrate, whether the agreement is a valid and enforceable contract for arbitration, and whether specific claims shall be arbitrated under the arbitration agreement.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 **3. In deciding all arbitrability issues as described in subsection 2 of this section, the**
17 **arbitrator shall find such agreements valid and supported by adequate consideration, not**
18 **illusory, and not contracts of adhesion for purposes of this section if:**

19 **(1) The agreement requires both parties to arbitrate those disputes that are subject**
20 **to arbitration as set forth in the arbitration agreement;**

21 **(2) The employer or health care provider notifies the other party in writing of the**
22 **terms of the agreement;**

23 **(3) The party so notified acknowledges acceptance of the terms in writing;**

24 **(4) In the case of health care providers and patients, the health care provider is**
25 **obligated to advance all costs of the arbitration and is required to pay the attorney's fees**
26 **of the patient in connection with the arbitration unless otherwise ordered by the**
27 **arbitrator; and**

28 **(5) The agreement contains a provision that any modifications to the arbitration**
29 **agreement shall not:**

30 **(a) Apply to any claim that has accrued prior to the effective date of any such**
31 **modifications; or**

32 **(b) Allow unilateral modification of the arbitration agreement.**

33 **4. For purposes of subsection 2 of this section, the arbitrator or arbitrators shall**
34 **be selected by mutual agreement of the parties or, in the event that an arbitrator is not**
35 **mutually agreed upon, through a strike and ranking process.**

36 **5. Nothing in subsection 2 of this section shall apply to or affect the enforceability**
37 **of an arbitration provision contained in a collective bargaining agreement.**

38 **6. Contracts that warrant new homes against defects in construction and**
39 **reinsurance contracts are not contracts of insurance or contracts of adhesion for purposes**
40 **of the arbitration provisions of this section.**

 435.355. 1. **On motion by a party showing an agreement described in subsection**
2 **2 of section 435.350, the court shall stay any action or proceeding pending before the court**
3 **and order the parties to proceed to arbitration, in which case the procedures set out in**
4 **subsection 2 of this section shall not apply.**

5 **2. With respect to arbitration agreements other than those described in subsection**
6 **2 of section 435.350, the following provisions shall apply:**

7 **(1) On application of a party showing an **arbitration** agreement [~~described in section~~**
8 **435.350], and the opposing party's refusal to arbitrate, the court shall order the parties to proceed**
9 **with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the**
10 **court shall proceed summarily to the determination of the issue so raised and shall order**
11 **arbitration if found for the moving party; otherwise, the application shall be denied[-] ;**

12 ~~[2-]~~ **(2)** On application, the court may stay an arbitration proceeding commenced or
13 threatened on a showing that there is no agreement to arbitrate. Such an issue, when in
14 substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if
15 found for the moving party. If found for the opposing party, the court shall order the parties to
16 proceed to arbitration~~[-]~~ ;

17 ~~[3-]~~ **(3)** If an issue referable to arbitration under the alleged agreement is involved in
18 action or proceeding pending in a court having jurisdiction to hear applications under ~~[subsection~~
19 ~~]~~ **subdivision (1)** of this ~~[section]~~ **subsection**, the application shall be made therein. Otherwise
20 and subject to section 435.435, the application may be made in any court of competent
21 jurisdiction~~[-]~~ ;

22 ~~[4-]~~ **(4)** Any action or proceeding involving an issue subject to arbitration shall be stayed
23 if an order for arbitration or an application therefor has been made under this section or, if the
24 issue is severable, the stay may be with respect thereto only. When the application is made in
25 such action or proceeding, the order for arbitration shall include such stay~~[-]~~ ;

26 ~~[5-]~~ **(5)** An order for arbitration shall not be refused on the ground that the claim in issue
27 lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated
28 have not been shown.

435.440. 1. An appeal may be taken from:

2 (1) An order denying an application to compel arbitration made under **subdivision (1)**
3 **of subsection 2 of** section 435.355;

4 (2) An order granting an application to stay arbitration made under **subdivision (2) of**
5 subsection 2 of section 435.355;

6 (3) An order confirming or denying confirmation of an award;

7 (4) An order modifying or correcting an award;

8 (5) An order vacating an award without directing a rehearing; or

9 (6) A judgment or decree entered pursuant to the provisions of sections 435.350 to
10 435.470.

11 2. The appeal shall be taken in the manner and to the same extent as from orders or
12 judgments in a civil action.

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