

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 154

AN ACT

To repeal sections 435.350, 435.355, and 435.440, RSMo, and to enact in lieu thereof four new sections relating to arbitration agreements between employers and employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 435.350, 435.355, and 435.440, RSMo,
2 are repealed and four new sections enacted in lieu thereof, to be
3 known as sections 435.350, 435.352, 435.355, and 435.440, to read
4 as follows:

5 435.350. 1. A written agreement to submit any existing
6 controversy to arbitration or a provision in a written contract,
7 except contracts of insurance and contracts of adhesion, to
8 submit to arbitration any controversy thereafter arising between
9 the parties is valid, enforceable and irrevocable, save upon such
10 grounds as exist at law or in equity for the revocation of any
11 contract. [Contracts which warrant new homes against defects in
12 construction and reinsurance contracts are not "contracts of
13 insurance or contracts of adhesion" for purposes of the
14 arbitration provisions of this section.]

15 2. Except in cases where the agreement expressly and
16 unequivocally delegates the issue of arbitrability to the court,
17 in agreements between an employer and employee to submit to
18 arbitration certain controversies thereafter arising between the

1 parties, the arbitrator, and not the court, shall make all
2 initial decisions as to arbitrability including, but not limited
3 to, deciding whether the parties have agreed to arbitrate,
4 whether the agreement is a valid and enforceable contract for
5 arbitration, and whether specific claims must be arbitrated
6 pursuant to the arbitration agreement.

7 3. In deciding all arbitrability issues as described in
8 subsection 2 of this section, the arbitrator shall find such
9 agreements valid and supported by adequate consideration, not
10 illusory, and not contracts of adhesion for purposes of this
11 section where:

12 (1) The agreement requires both the employer and the
13 employee to arbitrate those disputes that are subject to
14 arbitration as set forth in the arbitration agreement;

15 (2) The employer notifies the employee, in writing, of the
16 terms of the agreement;

17 (3) The agreement complies with the provisions of this
18 chapter, including, but not limited to the provisions of section
19 435.460;

20 (4) The employee so notified acknowledges acceptance of the
21 terms in writing and continues to be employed after the effective
22 date of the arbitration agreement;

23 (5) The agreement contains a provision that any
24 modifications to the arbitration agreement shall not:

25 (a) Apply to any claim that has accrued prior to the
26 effective date of any such modifications; or

27 (b) Allow unilateral modification of the arbitration
28 agreement; and

1 (6) The agreement requires that the arbitrator or
2 arbitrators shall be selected by mutual agreement of the parties
3 or, in the event that an arbitrator is not mutually agreed upon,
4 through a strike and ranking process.

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

8 5. Contracts that warrant new homes against defects in
9 construction and reinsurance contracts are not contracts of
10 insurance or contracts of adhesion for purposes of the
11 arbitration provisions of this section.

12 435.352. Any clause in an arbitration agreement between an
13 employer and an employee that requires arbitration proceedings,
14 or the results thereof, to be confidential and nondisclosable
15 shall not be enforceable as to claims of sexual harassment,
16 sexual assault, or claims of discrimination or harassment based
17 upon any protected status under federal or state law.

18 435.355. 1. On motion by a party showing an agreement
19 described in subsection 2 of section 435.350, the court shall
20 stay any action or proceeding pending before the court and order
21 the parties to proceed to arbitration. The procedures set out in
22 subsection 2 of this section do not apply.

23 2. With respect to arbitration agreements other than those
24 described in subsection 2 of section 435.350, the provisions of
25 this subsection shall apply:

26 (1) On application of a party showing an arbitration
27 agreement [described in section 435.350], and the opposing
28 party's refusal to arbitrate, the court shall order the parties

1 to proceed with arbitration, but if the opposing party denies the
2 existence of the agreement to arbitrate, the court shall proceed
3 summarily to the determination of the issue so raised and shall
4 order arbitration if found for the moving party; otherwise, the
5 application shall be denied[.];

6 [2.] (2) On application, the court may stay an arbitration
7 proceeding commenced or threatened on a showing that there is no
8 agreement to arbitrate. Such an issue, when in substantial and
9 bona fide dispute, shall be forthwith and summarily tried and the
10 stay ordered if found for the moving party. If found for the
11 opposing party, the court shall order the parties to proceed to
12 arbitration[.];

13 [3.] (3) If an issue referable to arbitration under the
14 alleged agreement is involved in action or proceeding pending in
15 a court having jurisdiction to hear applications under
16 [subsection 1] subdivision (1) of this [section] subsection, the
17 application shall be made therein. Otherwise and subject to
18 section 435.435, the application may be made in any court of
19 competent jurisdiction[.];

20 [4.] (4) Any action or proceeding involving an issue
21 subject to arbitration shall be stayed if an order for
22 arbitration or an application therefor has been made under this
23 section or, if the issue is severable, the stay may be with
24 respect thereto only. When the application is made in such
25 action or proceeding, the order for arbitration shall include
26 such stay[.];

27 [5.] (5) An order for arbitration shall not be refused on
28 the ground that the claim in issue lacks merit or bona fides or

1 because any fault or grounds for the claim sought to be
2 arbitrated have not been shown.

3 435.440. 1. An appeal may be taken from:

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

6 (2) An order granting an application to stay arbitration
7 made under subdivision (2) of subsection 2 of section 435.355;

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

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

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

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

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