

FIRST REGULAR SESSION

SENATE BILL NO. 75

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIGGINS.

Pre-filed December 1, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0068S.011

AN ACT

To repeal sections 435.012, 435.014, 435.350, 435.355, 435.360, 435.365, 435.370, 435.375, 435.380, 435.385, 435.390, 435.395, 435.400, 435.405, 435.410, 435.415, 435.420, 435.425, 435.430, 435.435, 435.440, 435.445, 435.450, 435.455, 435.460, 435.465 and 435.470, RSMo 2000, relating to arbitration, and to enact in lieu thereof thirty-two new sections relating to the same subject, with an effective date for certain sections.

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

Section A. Sections 435.012, 435.014, 435.350, 435.355, 435.360, 435.365, 435.370, 435.375, 435.380, 435.385, 435.390, 435.395, 435.400, 435.405, 435.410, 435.415, 435.420, 435.425, 435.430, 435.435, 435.440, 435.445, 435.450, 435.455, 435.460, 435.465 and 435.470, RSMo 2000, are repealed and thirty-two new sections enacted in lieu thereof, to be known as sections 435.015, 435.017, 435.019, 435.021, 435.023, 435.025, 435.027, 435.029, 435.031, 435.032, 435.034, 435.036, 435.038, 435.039, 435.041, 435.043, 435.045, 435.047, 435.049, 435.051, 435.053, 435.055, 435.057, 435.059, 435.061, 435.063, 435.065, 435.067, 435.069, 435.072, 435.075 and 435.077, to read as follows:

[435.012. 1. In order to insure that all parties to an arbitration proceeding are aware of their rights under the provisions of sections 435.350 to 435.470, the notification served upon the parties by the arbitrator pursuant to subdivision (1) of section 435.370 shall contain a clear and concise statement of the issue subject to arbitration, if such has been agreed upon, and a statement advising the parties of their rights under sections 435.350 to 435.470 including, but not limited to:

- (1) The right to be represented by an attorney;

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(2) The right to seek subpoenas for the attendance of witnesses and subpoenas duces tecum;

(3) The right to be heard, to present evidence and cross-examine witnesses;

(4) The right to adjournment for good cause.

2. The notification shall include a brief statement detailing the name, experience and educational background of each neutral arbitrator.

3. Failure of the arbitrator, agent or sponsoring organization to provide notification as required by subsections 1 and 2 of this section shall be grounds for continuing the arbitration hearing for a period of at least ten days.]

[435.014. 1. If all the parties to a dispute agree in writing to submit their dispute to any forum for arbitration, conciliation or mediation, then no person who serves as arbitrator, conciliator or mediator, nor any agent or employee of that person, shall be subpoenaed or otherwise compelled to disclose any matter disclosed in the process of setting up or conducting the arbitration, conciliation or mediation.

2. Arbitration, conciliation and mediation proceedings shall be regarded as settlement negotiations. Any communication relating to the subject matter of such disputes made during the resolution process by any participant, mediator, conciliator, arbitrator or any other person present at the dispute resolution shall be a confidential communication. No admission, representation, statement or other confidential communication made in setting up or conducting such proceedings not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery.]

435.015. Sections 435.015 to 435.077 may be cited as the "Revised Uniform Arbitration Act".

435.017. 1. Effective August 28, 2001, the provisions of sections 435.019 to 435.077 shall govern agreements to arbitrate entered into:

(a) On or after August 28, 2001; and

(b) Before August 28, 2001, if all parties to the agreement to arbitrate or to arbitration proceedings agree in a record to be governed by the provisions of sections 435.019 to 435.077.

2. Before August 28, 2003, if all parties to the agreement to arbitrate or to arbitration proceedings entered into before August 28, 2001, do not agree to be governed by the provisions of sections 435.019 to 435.077, the provisions of sections 435.350 to 435.470 shall apply.

3. Effective August 28, 2003, the provisions of sections 435.019 to 435.077 shall govern agreements to arbitrate even if the arbitration agreement was entered into prior to August 28, 2001.

435.019. As used in sections 435.015 to 435.077 the following terms shall mean:

(1) "Arbitration organization", an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator;

(2) "Arbitrator", an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate;

(3) "Court", a court of competent jurisdiction in this state;

(4) "Knowledge", actual knowledge;

(5) "Person", an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity;

(6) "Record", information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

435.021. Except as otherwise provided pursuant to sections 435.015 to 435.077, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice. A person has notice if the person has knowledge of the notice or has received notice. A person receives notice when it comes to the person's attention or the notice is 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.

435.023. 1. Except as otherwise provided in subsections 2 and 3 of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of sections 435.015 to 435.077 to the extent permitted by law.

2. Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of subsection 1 of section 435.025, subsection 1 of section 435.027, section 435.031, subsections 1 and 2 of section 435.047, section 435.065, or section 435.069;

(2) Agree to restrict unreasonably the right pursuant to section 435.032 to notice of the initiation of an arbitration proceeding;

(3) Agree to restrict unreasonably the right pursuant to section 435.038 to disclosure of any facts by a neutral arbitrator; or

(4) Waive the right pursuant to section 435.045 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing pursuant to the provisions of sections 435.015 to 435.077, except that an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

3. A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or subdivision (1) of subsection 1 and subsection 2 of section 435.017, section 435.029, 435.041, 435.049, subsections 3 and 4 of section 435.053, 435.057, 435.059, 435.061, subsections 1 and 2 of section 435.063, section 435.072, section 435.075 or section 435.077.

435.025. 1. Except as otherwise provided in section 435.069, an application for judicial relief pursuant to the provisions of sections 435.015 to 435.077 must be made by motion to the court and heard in the manner and upon the notice provided by law or rule of court for making and hearing motions.

2. Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court pursuant to the provisions of sections 435.015 to 435.077 must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

435.027. 1. An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

2. The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

3. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

4. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

435.029. 1. On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

2. On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable

agreement to arbitrate, it shall order the parties to arbitrate.

3. If the court finds that there is no enforceable agreement, it may not, pursuant to this section, order the parties to arbitrate.

4. The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

5. If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion pursuant to this section must be made in that court. Otherwise a motion pursuant to this section may be made in any court as provided in section 435.067.

6. If a party makes a motion to the court to order arbitration under this section, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

7. If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

435.031. 1. Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may 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.

2. After an arbitrator is appointed and is authorized and able to act:

(1) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

3. A party does not waive a right of arbitration by making a motion pursuant to this section.

435.032. 1. A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy

sought.

2. Unless a person objects for lack or insufficiency of notice pursuant to subsection 3 of section 435.043 not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

435.034. 1. Except as otherwise provided in subsection 3 of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

2. The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

3. The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

435.036. 1. If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

2. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

435.038. 1. Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality

of the arbitrator in the arbitration proceeding, including:

(1) A financial or personal interest in the outcome of the arbitration proceeding;
and

(2) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or another arbitrator.

2. An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

3. If an arbitrator discloses a fact required by subsection 1 or 2 of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground pursuant to subdivision (2) of subsection 1 of section 435.059 for vacating an award made by the arbitrator.

4. If the arbitrator did not disclose a fact as required by subsections 1 or 2 of this section, upon timely objection by a party, the court pursuant to subdivision (2) of subsection 1 of section 435.059 may vacate an award.

5. An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality pursuant to subdivision (2) of subsection 1 of section 435.059.

6. If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground pursuant to subdivision (2) of subsection 1 of section 435.059.

435.039. If there is more than one arbitrator, the powers of the arbitrators must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing pursuant to section 435.043.

435.041. 1. An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

2. The immunity afforded by this section supplements any immunity under other law.

3. The failure of an arbitrator to make a disclosure required by section 435.038, does not cause any loss of immunity pursuant to this section.

4. In any judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

(1) To the extent necessary to determine the claim of an arbitrator, arbitration organization or a representative of the arbitration organization against a party to the arbitration proceeding; or

(2) To a hearing on a motion to vacate an award pursuant to subdivision (1) or (2) of subsection 1 of section 435.059 if the movant establishes prima facie that a ground for vacating the award exists.

5. If a person commences a civil action against an arbitrator, arbitration organization, or a representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection 4 of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney's fees and other reasonable expenses of litigation.

435.043. 1. An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

2. An arbitrator may decide a request for summary disposition of a claim or particular issue if all interested parties or upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

3. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn

the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

4. At a hearing pursuant to subsection 3 of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

5. If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with section 435.036 to continue the proceeding and to resolve the controversy.

435.045. A party to an arbitration proceeding may be represented by a lawyer.

435.047. 1. An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

2. In order to make the proceedings fair, expeditious, and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the disposition is taken.

3. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

4. If an arbitrator permits discovery pursuant to subsection 3 of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and may take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

5. An arbitrator may 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 in this state.

6. All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

7. The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

435.049. If an arbitrator makes a pre-award ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award pursuant to section 435.051. A prevailing party may make a motion to the court for an expedited order to confirm the award pursuant to section 435.057, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award pursuant to sections 435.059 and 435.061.

435.051. 1. An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

2. An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

435.053. 1. On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) Upon a ground stated in subdivision (1) or (3) of subsection 1 of section 435.061;

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

2. A motion pursuant to subsection 1 of this section must be made and notice given to all parties within twenty days after the movant receives notice of the award.

3. A party to the arbitration proceeding must give notice of any objections to the motion within ten days after receipt of the notice.

4. If a motion to the court is pending pursuant to sections 435.057, 435.059 or 435.061, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) Upon a ground stated in subdivision (1) or (3) of subsection 1 of section 435.061;

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

5. An award modified or corrected pursuant to this section is subject to section 435.057, 435.059 or 435.061.

435.055. 1. An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

2. An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

3. As to all remedies other than those authorized by subsections 1 and 2 of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award pursuant to section 435.057 or for vacating an award pursuant to section 435.059.

4. An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

5. If an arbitrator awards punitive damages or other exemplary relief pursuant to subsection 1 of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

435.057. After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award, at which time the court shall issue a confirming order unless the award is modified or corrected

pursuant to sections 435.053 or 435.061 or is vacated pursuant to section 435.059.

435.059. 1. Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award if:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was:

(a) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(b) Corruption by an arbitrator; or

(c) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 435.043, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection pursuant to subsection 3 of section 435.043 not later than the beginning of the arbitration hearing; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in section 435.032 so as to prejudice substantially the rights of a party to the arbitration proceeding.

2. A motion pursuant to this section must be filed within ninety days after the movant receives notice of the award pursuant to section 435.051 or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 435.053, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within ninety days after the ground is known or by the exercise of reasonable care would have been known by the movant.

3. If the court vacates an award on a ground other than that set forth in subsection 1 of this section it may order a rehearing. If the award is vacated on a ground stated in subdivision (5) of subsection 1 of this section, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subdivision (3), (4) or (6) of subsection 1 of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in subsection 2 of section 435.051 for an award.

4. If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is not pending.

435.061. 1. Upon motion made within ninety days after the movant receives notice of the award in a record pursuant to section 435.051 or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 435.053, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

2. If a motion made pursuant to subsection 1 of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

3. A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

435.063. 1. Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

2. A court may allow reasonable costs of the motion and subsequent judicial proceedings.

3. On application of a prevailing party to a contested judicial proceeding pursuant to sections 435.057, 435.059 or 435.061, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

435.065. 1. A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

2. An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award pursuant to the provisions of sections 435.015 to 435.077.

435.067. A motion pursuant to section 435.025 must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence

or place of business in this state, in the court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

435.069. 1. An appeal may be taken from:

- (1) An order denying a motion to compel arbitration;**
- (2) An order granting a motion to stay arbitration;**
- (3) An order confirming or denying confirmation of an award;**
- (4) An order modifying or correcting an award;**
- (5) An order vacating an award without directing a rehearing; or**
- (6) A final judgment entered pursuant to the provisions of sections 435.015 to**

435.077.

2. An appeal under this section must be taken as from an order or a judgment in a civil action.

435.072. In applying and construing the provisions of section 435.015 to 435.077, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

435.075. The provisions of sections 435.015 to 435.077 does not affect an action or proceeding commenced or right accrued before the provisions of sections 435.015 to 435.077 take effect.

435.077. The provisions of sections 435.015 to 435.077 governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sections 7001 and 7002, as amended.

[435.350. 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.]

[435.355. 1. On application of a party showing an agreement described in section 435.350, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party; otherwise, the application shall be denied.

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

3. If an issue referable to arbitration under the alleged agreement is involved in action or proceeding pending in a court having jurisdiction to hear applications under subsection 1 of this section, the application shall be made therein. Otherwise and subject to section 435.435, the application may be made in any court of competent jurisdiction.

4. Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

5. An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.】

【435.360. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.】

【435.365. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by sections 435.350 to 435.470.】

【435.370. Unless otherwise provided by the agreement:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(3) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.】

【435.375. A party has the right to be represented by an attorney at any proceeding or hearing under sections 435.350 to 435.470. A waiver thereof prior to the proceeding or hearing is ineffective.】

【435.380. 1. The arbitrators may issue or cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

2. On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

3. All provisions of law compelling a person under subpoena to testify are applicable.

4. Fees for attendance as a witness shall be the same as for a witness in the circuit court.】

【435.385. 1. The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

2. An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.】

【435.390. On application of a party or, if an application to the court is pending under section 435.400, 435.405 or 435.410, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in subdivisions (1) and (3) of subsection 1 of section 435.410, or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of sections 435.400, 435.405 and 435.410.】

【435.395. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the

conduct of the arbitration, shall be paid as provided in the award.]

[435.400. Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 435.405 and 435.410.]

[435.405. 1. Upon application of a party, the court shall vacate an award where:

- (1) The award was procured by corruption, fraud or other undue means;
- (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
- (3) The arbitrators exceeded their powers;
- (4) The 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 435.370, as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings pursuant to section 435.355 and the 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.

2. An application pursuant to this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

3. In vacating the award on grounds other than stated in subdivision (5) of subsection 1 of this section or subsection 5 of this section, the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with section 435.360, or if the award is vacated on grounds set forth in subdivisions (3) and (4) of subsection 1 of this section the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 435.360. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

4. If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

5. Notwithstanding the provisions of this section, if an arbitration award in any legal proceeding pursuant to chapter 452, RSMo, or chapter 454, RSMo, determines an issue regarding a child of the marriage, such determination shall be subject to de novo judicial review.]

[435.410. 1. Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

2. If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

3. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.]

[435.415. Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.]

[435.420. 1. On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

(1) The agreement and each written extension of the time within which to make the award;

(2) The award;

(3) A copy of the order confirming, modifying or correcting the award; and

(4) A copy of the judgment or decree.

2. The judgment or decree may be docketed as if rendered in an action.]

[435.425. Except as otherwise provided, an application to the court under sections 435.350 to 435.470 shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.]

[435.430. The term "court" means any court of competent jurisdiction of this state. The making of an agreement described in section 435.350 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under sections 435.350 to 435.470 and to enter judgment on an award thereunder.]

[435.435. An initial application shall be made to the circuit court of the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has

been held, in the county in which it was held. Otherwise the application shall be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the circuit court of Cole County. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.]

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

(1) An order denying an application to compel arbitration made under section 435.355;

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

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

(4) An order modifying or correcting an award;

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

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

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

[435.445. Sections 435.350 to 435.470 apply only to agreements made subsequent to the taking effect of sections 435.350 to 435.470.]

[435.450. Sections 435.350 to 435.470 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.]

[435.455. If any provision of sections 435.350 to 435.470 or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of sections 435.350 to 435.470 which can be given without the invalid provision or application, and to this end the provisions of sections 435.350 to 435.470 are severable.]

[435.460. Each contract subject to the provisions of sections 435.350 to 435.470 shall include adjacent to, or above, the space provided for signatures a statement, in ten point capital letters, which read substantially as follows: "THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES."]

[435.465. 1. Sections 435.350 to 435.470 shall apply only to written agreements between commercial persons, or between such persons and those with whom they contract other than commercial persons, involving the submission of any existing controversy to arbitration, or involving a written contract between commercial persons, or between such persons and those with whom they contract other than commercial persons, to submit to arbitration any controversy thereafter arising between such parties. Such agreements and

provisions are valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.

2. As used in subsection 1 of this section, the term "commercial persons" shall mean all persons and legal entities, excluding any government or governmental subdivision or agency.]

[435.470. Sections 435.350 to 435.470 may be cited as the "Uniform Arbitration Act".]

Section B. The repeal of sections 435.012, 435.014, 435.350, 435.355, 435.360, 435.365, 435.370, 435.375, 435.380, 435.385, 435.390, 435.395, 435.400, 435.405, 435.410, 435.415, 435.420, 435.425, 435.430, 435.435, 435.440, 435.445, 435.450, 435.455, 435.460, 435.465 and 435.470 shall be effective on August 28, 2003.

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