

SECOND REGULAR SESSION

# SENATE BILL NO. 728

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3063S.01I

## 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:*

Section A. Sections 435.350, 435.355, and 435.440, RSMo, are repealed  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

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

9 2. Except in cases where the agreement expressly and  
10 unequivocally delegates the issue of arbitrability to the court, in  
11 agreements between an employer and employee to submit to arbitration  
12 certain controversies thereafter arising between the parties, the  
13 arbitrator, and not the court, shall make all initial decisions as to  
14 arbitrability including, but not limited to, deciding whether the parties  
15 have agreed to arbitrate, whether the agreement is a valid and  
16 enforceable contract for arbitration, and whether specific claims must  
17 be arbitrated pursuant to the arbitration agreement.

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

18           3. In deciding all arbitrability issues as described in subsection  
19 2 of this section, the arbitrator shall find such agreements valid and  
20 supported by adequate consideration, not illusory, and not contracts of  
21 adhesion for purposes of this section where:

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

25           (2) The employer notifies the employee, in writing, of the terms  
26 of the agreement in a document that is separate from the employee's  
27 handbook;

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

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

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

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

37           (b) Allow unilateral modification of the arbitration agreement;  
38 and

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

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

46           5. The provisions of subsection 3 of this section shall not be  
47 construed as the exclusive means for entering into a valid arbitration  
48 agreement between an employer and employee or to prevent an  
49 arbitrator or court from enforcing an arbitration agreement not  
50 meeting the requirements of subdivisions (1) to (6) of subsection 3 of  
51 this section if the agreement is otherwise valid under federal or state  
52 law.

53           6. Contracts that warrant new homes against defects in  
54 construction and reinsurance contracts are not contracts of insurance

55 or contracts of adhesion for purposes of the arbitration provisions of  
56 this section.

435.352. Any clause in an arbitration agreement between an  
2 employer and an employee that requires arbitration proceedings, or the  
3 results thereof, to be confidential and nondisclosable shall not be  
4 enforceable as to claims of sexual harassment, sexual assault, or claims  
5 of discrimination or harassment based upon any protected status under  
6 federal or state law.

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

6 2. With respect to arbitration agreements other than those  
7 described in subsection 2 of section 435.350, the provisions of this  
8 subsection shall apply:

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

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

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

26 [4.] (4) Any action or proceeding involving an issue subject to arbitration  
27 shall be stayed if an order for arbitration or an application therefor has been  
28 made under this section or, if the issue is severable, the stay may be with respect

29 thereto only. When the application is made in such action or proceeding, the  
30 order for arbitration shall include such stay[.];

31 [5.] (5) An order for arbitration shall not be refused on the ground that  
32 the claim in issue lacks merit or bona fides or because any fault or grounds for  
33 the claim sought to be arbitrated 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  
3 **subdivision (1) of subsection 2 of** section 435.355;

4 (2) An order granting an application to stay arbitration made under  
5 **subdivision (2) of** 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  
10 435.350 to 435.470.

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

Bill ✓

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