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States' Alternative Dispute Resolution Statutes

State of Missouri

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States' Alternative Dispute Resolution Statutes

STATE OF MISSOURI

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Arbitration Title XXVIII.

Current through the end of the 2008 Second Regular Session

435.012. Notice, contents of, effect of insufficient notice

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;
- (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. Arbitrators, may not be subpoenaed--proceedings regarded as settlement negotiations,

communications confidential

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.

Uniform Arbitration Act

435.350. Validity of arbitration agreement

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. Proceedings to compel or stay arbitration

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. Appointment of arbitrators by court

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. Majority action by arbitrators

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. Hearing

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. Representation by attorney

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. Witnesses, subpoenas, depositions

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. Award

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. Change of award by arbitrators

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. Fees and expenses of arbitration

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. Confirmation of an award

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. Vacating an award

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. Modification or correction of award

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. Judgment or decree on award

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. Judgment roll, docketing

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. Applications to court

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. Court, jurisdiction

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. Venue

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. Appeals

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. Act not retroactive

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. Uniformity of interpretation

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. Constitutionality

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. Notice of arbitration provisions required

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. Application of law

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. Short title

Sections 435.350 to 435.470 may be cited as the “Uniform Arbitration Act”.

Rule 17. Alternative Dispute Resolution

Rules Governing the Missouri Bar and the Judiciary

Current with amendments received through April 2008

17.01. Alternative Dispute Resolution Program--Establishment--Purpose--Definition

(a) Any judge by order or any judicial circuit by local court rule may establish an alternative dispute resolution program as provided in this Rule 17. It is the purpose of the Court through adoption and implementation of this Rule 17 to provide an alternative mechanism for the resolution of civil disputes, except those subject to Supreme Court Rules 88.02 to 88.08, by means of alternative dispute resolution procedures for disposition before trial of certain civil cases with resultant savings in time and expenses to the litigants and to the court without sacrificing the quality of justice to be rendered or the right of the litigants to jury trial in the event that a settlement satisfactory to the parties is not achieved through alternative dispute resolution.

(b) As used in this Rule 17, alternative dispute resolution programs include but are not limited to:

(1) “Arbitration,” a procedure in which neutral persons, typically one person or a panel of three persons, hears both sides and decides the matter. The arbitrator's decision is not binding and simply serves to guide the parties in trying to settle their lawsuit. An arbitration is typically less formal than a trial, is usually shorter, and may be conducted in a private setting at a time mutually agreeable to the parties. The parties, by agreement, select the arbitrator or arbitrators and determine the rules under

which the arbitration will be conducted;

(2) “Early neutral evaluation,” a process designed to bring together parties to litigation and their counsel in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process;

(3) “Mediation,” a process in which a neutral third party facilitates communication between the parties to promote settlement. A mediator may not impose his or her own judgment on the issues for that of the parties;

(4) “Mini-Trial,” a process in which each party and counsel present the case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case.

(5) “Summary jury trial,” is an informal settlement process in which jurors hear abbreviated case presentations. A judge presides over the hearing, but there are no witnesses, and the rules of evidence are relaxed. After the “trial”, the jurors retire to deliberate and then deliver an advisory verdict. The verdict becomes the starting point for settlement negotiations among the parties.

(c) Each circuit is encouraged to develop other alternative dispute resolution programs that will meet the needs of the parties, the circuit and the community.

(d) All alternative dispute resolution processes shall be non-binding unless the parties enter into a written agreement as provided in Rule 17.06(c). A written agreement shall be binding to the extent not prohibited by law.

17.02. Notice of Alternative Dispute Resolution Services

(a) In each civil action to which the alternative dispute resolution program applies, a notice of alternative dispute resolution services shall be furnished to all parties to the action. The notice shall be provided to the party initiating the action at the time the action is filed. All responding parties shall receive the notice with the summons and petition. The notice shall advise parties of the availability and purposes of alternative dispute resolution services. Other means of providing notice may be designated by local court rule.

(b) In addition to the provisions of Rule 17.02(a), counsel shall advise their clients of the availability of alternative dispute resolution programs.

17.03. Referral, Notification and Appointment

(a) A civil action shall be ordered to alternative dispute resolution upon stipulation of the parties. A civil action may be ordered to alternative dispute resolution upon the motion of any party or by the court. Absent the parties agreeing to an alternative dispute resolution process, the court shall determine the most appropriate process.

(b) If counsel for any party, after conferring with their respective clients, all other attorneys, and unrepresented parties, conclude that referral to alternative dispute resolution has no reasonable chance of being productive, they may opt out by so advising the court, in writing, within thirty days of the order of referral. The matter shall not thereafter be referred by the court to alternative dispute resolution absent compelling circumstances, which shall be set out by the court in any order referring the matter to alternative dispute resolution.

(b) If counsel for any party, after conferring with their respective clients, all other attorneys, and unrepresented parties, conclude that referral to alternative dispute resolution has no reasonable chance of being productive, they may opt out by so advising the court, in writing, within thirty days before the deadline to begin the alternative dispute resolution. The matter shall not thereafter be referred by the court to alternative dispute resolution absent compelling circumstances, which shall be set out by the court in any order referring the matter to alternative dispute resolution.

(c) If the parties agree to participate in the alternative dispute resolution program but cannot agree upon the neutral, then the court shall select a neutral from individuals or organizations qualified under Rule 17.04.

(d) Nothing contained in this Rule 17 shall preclude the parties from agreeing:

(1) To participate in any alternative dispute resolution program independent of this Rule 17;

(2) On different neutrals than that selected by the court either before or after the entry of an order entered pursuant to this Rule 17;

(3) On a neutral not otherwise identified on any court maintained list.

(e) Each circuit shall adopt necessary local court rules assuring the impartiality of the neutral, allowing for the removal or withdrawal of the neutral, and providing for the method of, but not the rate of, compensation of all neutrals.

(f) Each circuit shall adopt such local court rules as shall be appropriate for the scheduling of disputes referred to the program.

17.04. Qualification of Individuals and Organizations

Any individual providing alternative dispute resolution services independently or through an organization under this Rule 17 shall have appropriate training or equivalent experience in conducting the type of alternative dispute resolution service the individual or organization provides. Appropriate training for mediators shall include at least sixteen hours of formal training. Appropriate training for individuals providing other services shall include at least four hours of formal training. The Missouri Bar shall determine the number of hours of formal training of the individual.

17.05. Status of Results

(a) Absent the written agreement provided in Rule 17.06(c), any award or evaluation shall be reported only to the parties and their lawyers and shall have no effect other than as a guide to the parties in

resolving the lawsuit and shall be inadmissible in any court.

(b) The parties shall advise the court within ten days of the termination of the alternative dispute resolution process only that the parties were successful in resolving their dispute or that issues remain open and unresolved.

17.06. Confidentiality and Settlement

(a) An alternative dispute resolution process undertaken pursuant to this Rule 17 shall be regarded as settlement negotiations. Any communication relating to the subject matter of such dispute made during the alternative dispute resolution process by a participant or any other person present at the process shall be a confidential communication. No admission, representation, statement or other confidential communication made in setting up or conducting such process shall be admissible as evidence or subject to discovery, except that, no fact independently discoverable shall be immune from discovery by virtue of having been disclosed in such confidential communication.

(b) No individual or organization providing alternative dispute resolution services pursuant to this Rule 17 or any agent or employee of the individual or organization shall be subpoenaed or otherwise compelled to disclose any matter disclosed in the process of setting up or conducting the alternative dispute resolution process.

(c) Settlement shall be by a written document setting out the essential terms of the agreement executed after the termination of the alternative dispute resolution process.

(d) An individual or organization providing alternative dispute resolution services pursuant to this Rule 17 or any agent or employee of the individual or organization may be called in an action to enforce the written settlement agreement reached following the conclusion of the alternative dispute resolution process for the limited purpose of describing events following the conclusion of the alternative dispute resolution process.

17.07. Discovery

In an action referred to an alternative dispute resolution program, discovery may proceed as in any other action, and all motions regarding discovery disputes shall be ruled upon by the court as in any other action. Discovery may take place both before and after an alternative dispute resolution process held pursuant to this Rule 17.