

HOUSE BILL NO. 1533

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLEBRACHT.

3158H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 435, RSMo, by adding thereto three new sections relating to the failure to pay arbitration fees.

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

Section A. Chapter 435, RSMo, is amended by adding thereto three new sections, to be known as sections 435.500, 435.503, and 435.506, to read as follows:

435.500. 1. In an employment or consumer arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration administrator, the drafting party to pay certain fees and costs before the arbitration can proceed, if the fees or costs to initiate an arbitration proceeding are not paid within thirty days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration.

2. If the drafting party materially breaches the arbitration agreement and is in default under subsection 1 of this section, the employee or consumer may do either of the following:

(1) Withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction; or

(2) Compel arbitration in which the drafting party shall pay reasonable attorney's fees and costs related to the arbitration.

3. If the employee or consumer withdraws the claim from arbitration and proceeds with an action in a court of appropriate jurisdiction under subdivision (1) of subsection 2 of this section, the statute of limitations with regard to all claims brought or

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

17 that relate back to any claim brought in arbitration shall be tolled as of the date of the
18 first filing of a claim in any court, arbitration forum, or other dispute resolution forum.

19 4. If the employee or consumer proceeds with an action in a court of appropriate
20 jurisdiction, the court shall impose sanctions on the drafting party in accordance with
21 section 435.506.

435.503. 1. In an employment or consumer arbitration that requires, either
2 expressly or through application of state or federal law or the rules of the arbitration
3 provider, that the drafting party pay certain fees and costs during the pendency of an
4 arbitration proceeding, if the fees or costs required to continue the arbitration
5 proceeding are not paid within thirty days after the due date, the drafting party is in
6 material breach of the arbitration agreement, is in default of the arbitration, and waives
7 its right to compel the employee or consumer to proceed with that arbitration as a result
8 of the material breach.

9 2. If the drafting party materially breaches the arbitration agreement and is in
10 default under subsection 1 of this section, the employee or consumer may unilaterally
11 elect to do any of the following:

12 (1) Withdraw the claim from arbitration and proceed in a court of appropriate
13 jurisdiction. If the employee or consumer withdraws the claim from arbitration and
14 proceeds with an action in a court of appropriate jurisdiction, the statute of limitations
15 with regard to all claims brought or that relate back to any claim brought in arbitration
16 shall be tolled as of the date of the first filing of a claim in any court, arbitration forum,
17 or other dispute resolution forum;

18 (2) Continue the arbitration proceeding, if the arbitration company agrees to
19 continue administering the proceeding, notwithstanding the drafting party's failure to
20 pay fees or costs. The neutral arbitrator or arbitration company may institute a
21 collection action at the conclusion of the arbitration proceeding against the drafting
22 party that is in default of the arbitration for payment of all fees associated with the
23 employment or consumer arbitration proceeding, including the cost of administering
24 any proceedings after the default;

25 (3) Petition the court for an order compelling the drafting party to pay all
26 arbitration fees that the drafting party is obligated to pay under the arbitration
27 agreement or the rules of the arbitration company; or

28 (4) Pay the drafting party's fees and proceed with the arbitration proceeding. As
29 part of the award, the employee or consumer shall recover all arbitration fees paid on
30 behalf of the drafting party without regard to any findings on the merits in the
31 underlying arbitration.

32 **3. If the employee or consumer withdraws the claim from arbitration and**
33 **proceeds in a court of appropriate jurisdiction under subdivision (1) of subsection 2 of**
34 **this section, both of the following apply:**

35 **(1) The employee or consumer may bring a motion, or a separate action, to**
36 **recover all attorney's fees and all costs associated with the abandoned arbitration**
37 **proceeding. The recovery of arbitration fees, interest, and related attorney's fees shall**
38 **be without regard to any findings on the merits in the underlying action or arbitration;**
39 **and**

40 **(2) The court shall impose sanctions on the drafting party in accordance with**
41 **section 435.506.**

42 **4. If the employee or consumer continues in arbitration under subdivisions (2) to**
43 **(4) of subsection 2 of this section, inclusive, the arbitrator shall impose appropriate**
44 **sanctions on the drafting party, including monetary sanctions, issue sanctions, evidence**
45 **sanctions, or terminating sanctions.**

435.506. 1. The court shall impose a monetary sanction against a drafting party
2 **that materially breaches an arbitration agreement under subsection 1 of section 435.500**
3 **or subsection 1 of section 435.503, by ordering the drafting party to pay the reasonable**
4 **expenses, including attorney's fees and costs, incurred by the employee or consumer as a**
5 **result of the material breach.**

6 **2. In addition to the monetary sanction described in subsection 1 of this section,**
7 **the court may order any of the following sanctions against a drafting party that**
8 **materially breaches an arbitration agreement under subsection 1 of section 435.500 or**
9 **subsection 1 of section 435.503, unless the court finds that the one subject to the sanction**
10 **acted with substantial justification or that other circumstances make the imposition of**
11 **the sanction unjust:**

12 **(1) An evidence sanction by an order prohibiting the drafting party from**
13 **conducting discovery in the civil action;**

14 **(2) A terminating sanction by one of the following orders:**

15 **(a) An order striking out the pleadings or parts of the pleadings of the drafting**
16 **party; or**

17 **(b) An order rendering a judgment by default against the drafting party; or**

18 **(3) A contempt sanction by an order treating the drafting party as in contempt**
19 **of court.**

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