

SECOND REGULAR SESSION

HOUSE BILL NO. 2049

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COLEMAN (97).

4800H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 435.415 and 537.065, RSMo, and to enact in lieu thereof two new sections relating to civil actions.

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

Section A. Sections 435.415 and 537.065, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 435.415 and 537.065, to read as follows:

435.415. **1. Except as provided in subsection 2 of this section**, 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.

2. Any arbitration award or any judgment or decree entered on an award shall not be binding on any liability insurer, be admissible in evidence in any lawsuit against any liability insurer for any party to an award, or provide the basis for any judgment or decree, including any garnishment, against any liability insurer, unless such liability insurer has also agreed in writing to the arbitration proceeding. Any arbitration award or any judgment or decree confirming, modifying, or correcting any arbitration award shall not be subject to garnishment, enforcement, or collection from any liability insurer unless the liability insurer has agreed in writing to the written arbitration agreement. Unless otherwise required by contract, a liability insurer's election not to participate in an arbitration proceeding shall not constitute, nor be construed to be, bad faith. Nothing in this section shall apply to any arbitration award arising out of an arbitration agreement preceding the date of the injury or loss on which an arbitration award is based.

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 **3. As used in this section, the term "insurer" shall mean any entity authorized to**
18 **transact liability insurance business in this state including, but not limited to, any liability**
19 **insurance company organized, incorporated, or doing business under the provisions of**
20 **chapter 379, any entity formed under section 537.620, any entity that is subject to sections**
21 **537.700 to 537.756, or any entity that provides risk management services to any public or**
22 **private entity.**

 537.065. 1. Any person having an unliquidated claim for damages against a tort-feasor,
2 on account of personal injuries, bodily injuries, or death, provided that, such tort-feasor's insurer
3 or indemnitor has the opportunity to defend the tort-feasor without reservation but refuses to do
4 so, may enter into a contract with such tort-feasor or any insurer on his or her behalf or both,
5 whereby, in consideration of the payment of a specified amount, the person asserting the claim
6 agrees that in the event of a judgment against the tort-feasor, neither such person nor any other
7 person, firm, or corporation claiming by or through him or her will levy execution, by
8 garnishment or as otherwise provided by law, except against the specific assets listed in the
9 contract and except against any insurer which insures the legal liability of the tort-feasor for such
10 damage and which insurer is not excepted from execution, garnishment or other legal procedure
11 by such contract. Execution or garnishment proceedings in aid thereof shall lie only as to assets
12 of the tort-feasor specifically mentioned in the contract or the insurer or insurers not excluded
13 in such contract. Such contract, when properly acknowledged by the parties thereto, may be
14 recorded in the office of the recorder of deeds in any county where a judgment may be rendered,
15 or in the county of the residence of the tort-feasor, or in both such counties, and if the same is
16 so recorded then such tort-feasor's property, except as to the assets specifically listed in the
17 contract, shall not be subject to any judgment lien as the result of any judgment rendered against
18 the tort-feasor, arising out of the transaction for which the contract is entered into.

19 2. Before a judgment may be entered against any tort-feasor after such tort-feasor has
20 entered into a contract under this section, the insurer or insurers shall be provided with written
21 notice of **both** the execution of the contract and **the pendency or later filing of the civil action**
22 **where that judgment is sought and** shall have ~~[thirty days after receipt of such notice to~~
23 ~~intervene as a matter of right in any pending lawsuit involving the claim for damages]~~ **the**
24 **unconditional right to intervene in any pending civil action involving the claim for damages**
25 **within thirty days after receipt of the later of either such notice. Upon intervention under**
26 **this section, the intervenor shall have all rights afforded defendants under the Missouri**
27 **rules of civil procedure including, but not limited to, the right to conduct discovery, the**
28 **right to engage in motion practice, and the right to a trial by jury. The intervenor shall**
29 **also have the right to assert any rights or raise any defenses available to the tort-feasor and**
30 **to assert any rights or raise any defenses that would have been available to the tort-feasor**

31 **in the absence of the contract entered into under this section or other agreement between**
32 **the parties to that contract. However, nothing in this section shall alter or reduce the**
33 **intervening insurer's obligations to any insureds other than the tort-feasor, including any**
34 **co-insureds of the defendant tort-feasor.**

35 3. The provisions of this section shall apply to any covenant not to execute or any
36 contract to limit recovery to specified assets, regardless of whether it is referred to as a contract
37 under this section.

38 4. Nothing in this section shall be construed to prohibit an insured from bringing a
39 separate action asserting that the insurer acted in bad faith.

40 **5. As used in this section, the term "insurer" shall mean any entity authorized to**
41 **transact liability insurance business in this state including, but not limited to, any liability**
42 **insurance company organized, incorporated, or doing business under the provisions of**
43 **chapter 379, any entity formed under section 537.620, any entity that is subject to sections**
44 **537.700 to 537.756, or any entity that provides risk management services to any public or**
45 **private entity.**

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