

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2049

100TH GENERAL ASSEMBLY

4800H.02P

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Section A. Sections 435.415 and 537.065, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 435.415 and 537.065, to read as follows: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 arbitration award shall not be binding on any liability insurer, shall not be admissible in evidence in any lawsuit against any liability insurer for any party to an arbitration award, and shall not provide the basis for any judgment or decree, including any garnishment, against any liability insurer, unless the liability insurer has 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 its insurance contract, a liability insurer's election not to participate in an arbitration proceeding shall not constitute, nor be construed to be, bad faith. This section shall not apply to any arbitration required by statute or arising out of an arbitration agreement preceding the date of the injury or loss which is the subject of the arbitration.

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.

18 **3. As used in this section, the term "insurer" shall include any entity authorized to**
19 **transact liability insurance business in this state including, but not limited to, any liability**
20 **insurance company organized, incorporated, or doing business under the provisions of**
21 **chapter 379, any entity formed under section 537.620, any entity that is subject to sections**
22 **537.700 to 537.756, or any entity that provides risk management services to any public or**
23 **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 **if**
5 **the insurer has refused to withdraw a reservation of rights or declined coverage for such**
6 **unliquidated claim**, whereby, in consideration of the payment of a specified amount, the person
7 asserting the claim agrees that in the event of a judgment against the tort-feasor, neither such
8 person nor any other person, firm, or corporation claiming by or through him or her will levy
9 execution, by garnishment or as otherwise provided by law, except against the specific assets
10 listed in the contract and except against any insurer which insures the legal liability of the
11 tort-feasor for such damage and which insurer is not excepted from execution, garnishment or
12 other legal procedure by such contract. Execution or garnishment proceedings in aid thereof
13 shall lie only as to assets of the tort-feasor specifically mentioned in the contract or the insurer
14 or insurers not excluded in such contract. Such contract, when properly acknowledged by the
15 parties thereto, may be recorded in the office of the recorder of deeds in any county where a
16 judgment may be rendered, or in the county of the residence of the tort-feasor, or in both such
17 counties, and if the same is so recorded then such tort-feasor's property, except as to the assets
18 specifically listed in the contract, shall not be subject to any judgment lien as the result of any
19 judgment rendered against the tort-feasor, arising out of the transaction for which the contract
20 is entered into.

21 2. ~~[Before a judgment may be entered against any tort-feasor after such tort-feasor has~~
22 ~~entered into a contract under this section, the insurer or insurers shall be provided with written~~
23 ~~notice of the execution of the contract and shall have thirty days after receipt of such notice to~~
24 ~~intervene as a matter of right in any pending lawsuit involving the claim for damages.] **If any**~~
25 **action seeking a judgment on the claim against the tort-feasor is pending at the time of the**
26 **execution of any contract entered into under this section, then, within thirty days after such**
27 **execution, the tort-feasor shall provide his or her insurer or insurers with a copy of the**
28 **executed contract and a copy of any such action. If any action seeking a judgment on the**
29 **claim against the tort-feasor is pending at the time of the execution of any contract entered**
30 **into under this section but is thereafter dismissed, then, within thirty days after the refiling**

31 of that action or the filing of any subsequent action arising out of the claim for damages
32 against the tort-feasor, the tort-feasor shall provide his or her insurer or insurers with a
33 copy of the executed contract and a copy of the refiled or subsequently filed action seeking
34 a judgment on the claim against the tort-feasor. If no action seeking a judgment on the
35 claim against the tort-feasor is pending at the time of the execution of any contract entered
36 into under this section, then, within thirty days after the tort-feasor receives notice of any
37 subsequent action, by service of process or otherwise, the tort-feasor shall provide his or
38 her insurer or insurers with a copy of the executed contract and a copy of any action
39 seeking a judgment on the claim against the tort-feasor.

40 3. No judgment shall be entered against any tort-feasor after such tort-feasor has
41 entered into a contract under this section for at least thirty days after the insurer or
42 insurers have received written notice as provided in subsection 2 of this section.

43 4. Any insurer or insurers who receive notice under this section shall have the
44 unconditional right to intervene in any pending civil action involving the claim for damages
45 within thirty days after receipt of such notice. Upon intervention under this section, the
46 intervenor shall have all rights afforded to defendants under the Missouri rules of civil
47 procedure including, but not limited to, the right to conduct discovery, the right to engage
48 in motion practice, and the right to a trial by jury. The intervenor shall also have the right
49 to assert any rights or raise any defenses available to the tort-feasor and to assert any
50 rights or raise any defenses that would have been available to the tort-feasor in the absence
51 of the contract entered into under this section or other agreement between the parties to
52 that contract. However, nothing in this section shall alter or reduce the intervening
53 insurer's obligations to any insureds other than the tort-feasor, including any coinsureds
54 of the defendant tort-feasor.

55 5. The provisions of this section shall apply to any covenant not to execute or any
56 contract to limit recovery to specified assets, regardless of whether it is referred to as a contract
57 under this section.

58 6. All terms of any covenant not to execute or of any contract to limit recovery to
59 specified assets, regardless of whether it is referred to as a contract under this section, shall
60 be in writing and signed by the parties to the covenant or contract. No unwritten term of
61 any covenant not to execute or of any contract to limit recovery to specified assets,
62 regardless of whether it is referred to as a contract under this section, shall be enforceable
63 against any party to the covenant or contract, the liability insurer of any party to the
64 covenant or contract, or any other person or entity.

65 [4-] 7. Nothing in this section shall be construed to prohibit an insured from bringing a
66 separate action asserting that the insurer acted in bad faith. **In any such action for bad faith,**

67 any agreement between the tort-feasor and insured, including any contract under this
68 section, shall be admissible in evidence. The exercise of any rights under this section shall
69 not constitute, nor be construed to be bad faith.

70 8. As used in this section, the term "insurer" shall include any entity authorized to
71 transact liability insurance business in this state including, but not limited to, any liability
72 insurance company organized, incorporated, or doing business under the provisions of
73 chapter 379, any entity formed under section 537.620, any entity that is subject to sections
74 537.700 to 537.756, or any entity that provides risk management services to any public or
75 private entity.

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