HCS HB 2049 -- CIVIL ACTIONS

SPONSOR: Coleman (97)

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 11 to 6. Voted "Do Pass" by the Standing Committee on Rules- Administrative Oversight by a vote of 6 to 2.

The following is a summary of the House Committee Substitute for HCS HB 2049.

This bill provides that any arbitration award shall not be enforceable against insurers, as defined in the bill, unless the insurer has agreed in writing to the arbitration proceeding or agreement. Unless otherwise required by contract, an insurer's election to not participate in arbitration shall not constitute bad faith. These provisions shall not apply to any arbitration awards arising out of an arbitration agreement preceding the date of injury or loss.

The bill specifies that a person having an unliquidated claim for damages against a tort-feasor may enter into an contract with the tort-feasor if the person's insurer has refused to withdraw a reservation of rights or declined coverage for such unliquidated claim. The bill specifies what happens if there is any action seeking a judgment on a claim against a tort-feasor at the time of the execution of any contract between the two parties, what happens if there is a pending action at the time of the execution of a contract but the action is subsequently dismissed, and what happens if there is no action seeking judgment on a claim at the time of the execution of any contract between the two parties. Any insurer who receives notice under this section will have the unconditional right to intervene in any pending civil action involving the claim for damages within 30 days after receipt of the notice and insurers intervening in a court proceeding where the defendant has contracted to limit his or her liability to specified assets shall have all the same rights as are afforded to defendants. These provisions shall not alter or reduce an intervening insurer's obligations to any insureds other than the tort-feasor, including any co-insureds.

All terms of a covenant not to execute or any terms of any contract to limit recovery to specified assets must be in writing and signed by the parties to the covenant or contract. No unwritten terms of any covenant or contract under this section will be enforceable against any party to the covenant or contract or any other person or entity. In any action asserting bad faith by the insurer, any agreement between the tort-feasor and the insured will be

admissible in evidence. The exercise of any rights under this section will not be construed to be bad faith.

The following is a summary of the public testimony from the committee hearing. The testimony was based on the introduced version of the bill.

PROPONENTS: Supporters say that this allows insurers to agree to terms before there are settlements against their insureds. There were loopholes created when these statutes were first created, and this bill seeks to close the loopholes. Currently, a plaintiff has the ability to enter into an agreement with a defendant and that leads to an inflated arbitration agreement for which insurers are responsible. The costs of those end up trickling down to other insureds.

Testifying for the bill were Representative Coleman; William Clayton Crawford, Shelter Insurance, Missouri Organization of Defense Attorneys, Missouri Insurance Coalition; Missouri Insurance Coalition; National Assocition of Mutual Insurance Companies, American Property Casualty Insurance Association, National Association of Mutual Insurance Companies, State Farm Insurance; and the American Property Casualty Insurance Association.

OPPONENTS: Those who oppose the bill say that the only time an "065 agreement" (an agreement under Section 537.065, RSMo) is used is when the insurer has the opportunity to defend his or her client but refuses. Missouri is currently the only state with this sort of statute but there are several other jurisdictions that have adopted a similar policy. Since 1899, the law in Missouri has stated that an insurer may not deny coverage and then insist on controlling the terms of the settlement, and this legislation would allow insurers to deny coverage, not hire an attorney for the insured, and then go after the insured. This also does not need to be changed in statute; this is something insurance companies could easily write into their policies.

Testifying against the bill were Kirk R. Presley, Presley & Presley LLC; Missouri Association of Trial Attorneys; and Blake Markus.