HB 345 -- ARBITRATION AWARDS

SPONSOR: DeGroot

COMMITTEE ACTION: Voted "Do Pass" by the Special Committee on Litigation Reform by a vote of 6 to 3. Voted "Do Pass" by the Standing Committee on Rules- Legislative Oversight by a vote of 5 to 2.

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 a 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.

This bill is similar to HCS HB 2049 (2020).

PROPONENTS: Supporters say that there is a need to prevent what occurred in 2017. The intent of the 2017 amendment was to include the insurance company without allowing it to intervene. There was circumvention of the intent of the legislature, and this has been upheld by the courts. Courts held that the legislature intended to pass this without it having any effect. Courts have held for carriers that have received 30-day notice, they have no right to intervene and just have to watch what occurs. Rather than going to state court where cases like these should go, a party would ask for arbitration to avoid the 065 agreements. This bill would consider the insurance company a real party in interest since the company is left having to pay the claim. Arbitration, if agreed to by all parties, is the best. The issue here is when one party has no opportunity to present evidence while the other party presents all the evidence. This bill seeks to restore the balance to the 065 process. This bill ensures that cases are fair and are tried on the merits. There must be equal and fair access to the courts for all parties. Insurance companies should be able to meaningfully defend themselves.

Testifying for the bill were Representative Degroot; Russell Watters; Missouri Organization of Defense Lawyers; Missouri Civil Justice Reform Coalition; American Property Casualty Insurance Association; Missouri Chamber of Commerce and Industry; Associated Industries of Missouri; Missouri Insurance Coalition; United States Chamber of Commerce; Enteprise Leasing Of St. Louis LLC; and Missouri United School Insurance Council.

OPPONENTS: Those who oppose the bill say that this bill is unnecessary as there are lots of protections for insurance companies already. There seems to be confusion about what an insurance company's role is and what a real party of interest is. Insurance companies are not real parties in interest. They are indemnifiers when their clients have coverage.

Testifying against the bill was the Missouri Association of Trial Attorneys.