

FIRST REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 437

## 103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HARDWICK.

1524H.01P

JOSEPH ENGLER, Chief Clerk

### AN ACT

To repeal section 537.058, RSMo, and to enact in lieu thereof one new section relating to settlement demands.

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

Section A. Section 537.058, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.058, to read as follows:

537.058. 1. As used in this section, the following terms shall mean:

(1) "Extracontractual damages", any amount of damage that exceeds the total available limit of liability insurance for all of a liability insurer's liability insurance policies applicable to a claim for personal injury, bodily injury, or wrongful death;

(2) "[Time-limited] Settlement demand", any offer to settle any claim for personal injury, bodily injury, or wrongful death made by or on behalf of a claimant to a tort-feasor with a liability insurance policy for purposes of settling a claim against such tort-feasor within the insurer's limit of liability insurance~~], which by its terms must be accepted within a specified period of time];~~

(3) "Tort-feasor", any person claimed to have caused or contributed to cause personal injury, bodily injury, or wrongful death to a claimant.

2. ~~[A time-limited]~~ **In any lawsuit alleging extracontractual damages against the tort-feasor's liability insurer, any prior settlement demand to settle any claim for personal injury, bodily injury, or wrongful death shall [be] not be considered to have been a reasonable opportunity to settle the claim unless the settlement demand was in writing, [shall reference] referenced this section, [shall be] was sent certified mail return-receipt**

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 requested to the tort-feasor's liability insurer, **remained open for acceptance by the liability**  
18 **insurer for at least ninety days from the date such demand was received by the liability**  
19 **insurer**, and ~~[shall contain]~~ **contained** the following **additional** material terms:

20 (1) The time period within which the offer shall remain open for acceptance by the  
21 tort-feasor's liability insurer~~[, which shall not be less]~~ **if the time period for acceptance is**  
22 **more** than ninety days from the date such demand is received by the liability insurer;

23 (2) The amount of monetary payment requested or a request for the applicable policy  
24 limits;

25 (3) The date and location of the loss;

26 (4) The claim number, if known;

27 (5) A description of all known injuries sustained by the claimant;

28 (6) The party or parties to be released if such ~~[time-limited]~~ **settlement** demand is  
29 accepted;

30 (7) A description of the claims to be released if such ~~[time-limited]~~ **settlement**  
31 demand is accepted; and

32 (8) An offer of unconditional release for the liability insurer's insureds from all  
33 present and future liability for that occurrence under section 537.060.

34 3. Such ~~[time-limited]~~ **settlement** demand shall be accompanied by:

35 (1) A list of the names and addresses of health care providers who provided treatment  
36 to or evaluation of the claimant or decedent for injuries suffered from the date of injury until  
37 the date of the ~~[time-limited]~~ **settlement** demand, and HIPAA compliant written  
38 authorizations sufficient to allow the liability insurer to obtain such records from the  
39 health care providers listed; and

40 (2) A list of the names and addresses of all the claimant's employers at the time the  
41 claimant was first injured until the date of the ~~[time-limited]~~ **settlement** demand, and written  
42 authorizations sufficient to allow the liability insurer to obtain such records from all  
43 employers listed, if the claimant asserts a loss of wages, earnings, compensation, or profits  
44 however denominated.

45 4. If a liability insurer with the right to settle on behalf of an insured receives a ~~[time-~~  
46 ~~limited]~~ **settlement** demand, such insurer may accept the ~~[time-limited]~~ **settlement** demand  
47 by providing written acceptance of the material terms outlined in subsection 2 of this section,  
48 delivered or postmarked to the claimant or the claimant's representative within the time period  
49 ~~[set in the time-limited]~~ **in which the settlement demand is open for acceptance by the**  
50 **liability insurer, which in no event shall be less than ninety days.**

51 5. Nothing in this section shall prohibit a claimant making a ~~[time-limited]~~ **settlement**  
52 demand from requiring payment within a specified period; provided, however, that such

53 period for payment shall not be less than ten days after the insurer's receipt of a fully executed  
54 unconditional release under section 537.060 as specified in subsection 2 of this section.

55 6. Nothing in this section applies to offers or demands or ~~[time-limited]~~ **settlement**  
56 demands issued within ninety days of the trial by jury of any claim on which a lawsuit has  
57 been filed.

58 7. In any lawsuit filed by a claimant as an assignee of the tort-feasor or by the tort-  
59 feasor for the benefit of the claimant, a ~~[time-limited]~~ **settlement** demand that does not  
60 comply with the terms of this section shall not be considered as a reasonable opportunity to  
61 settle for the insurer and shall not be admissible in any lawsuit alleging extracontractual  
62 damages against the tort-feasor's liability insurer.

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