

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 617

AN ACT

To amend chapter 375, RSMo, by adding thereto two new sections relating to the regulation of insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Chapter 375, RSMo, is amended by adding thereto
2 two new sections, to be known as sections 375.417 and 375.418, to
3 read as follows:

4 375.417. 1. As used in sections 375.417 and 375.418, the
5 following terms mean:

6 (1) "Duty to defend", the duty owed under a contract of
7 insurance that promises a defense to the insured, subject to the
8 terms of the insurance contract;

9 (2) "Duty to indemnify", the duty owed under a contract of
10 insurance for an insurer to pay settlements or judgments on
11 account of the actual or potential liability of an insured for
12 damages as required under the insurance contract;

13 (3) "Insured", a person or entity who is or may be entitled
14 to a defense or indemnification under a contract of insurance
15 according to the terms of the policy;

16 (4) "Reservation of rights", a statement by or on behalf of
17 an insurer of the reasons which may relieve the insurer of its

1 duty to defend or duty to indemnify or duty to both defend and
2 indemnify.

3 2. A reservation of rights shall:

4 (1) Be made in writing and be sent to the insured by mail,
5 or delivered to the insured either in person or by electronic
6 means pursuant to section 379.011;

7 (2) Be so provided to an insured no later than sixty days
8 after the insurer has both:

9 (a) Received notice of the claim or suit against the
10 insured, and

11 (b) Become aware of an allegation, fact, claim, or issue
12 for the reservation of rights it is asserting; and

13 (3) State with reasonable specificity the basis for the
14 reservation of rights.

15 3. When an insurer has communicated a reservation of
16 rights, the fact that the insurer has:

17 (1) Communicated the reservation of rights;

18 (2) Offered to defend subject to a reservation of rights;

19 (3) Provided a defense subject to a reservation of rights;

20 or

21 (4) Initiated or participated in a declaratory judgment
22 action or other action in which a judicial determination of
23 coverage under a contract of insurance is sought or made; or

24 (5) Declined or refused to withdraw a reservation of rights
25 shall not constitute a breach of any duty owed to the insured,
26 whether in tort, contract, or otherwise. In applying this
27 section, it is the intent of the general assembly to modify the
28 holdings contained in *Butters v. City of Independence*, 513 S.W.2d

1 418 (Mo. 1974), Whitehead v. Lakeside Hosp. Ass'n, 844 S.W.2d 475
2 (Mo. App. 1992), State ex rel. Mid-Century Ins. Co. v. McKelvey,
3 666 S.W.2d 457 (Mo. App. 1984), and Truck Ins. Exch. v. Prairie
4 Framing, LLC, 162 S.W.3d 64 (Mo. App. W.D. 2005), and other
5 decisions holding or otherwise suggesting that an insurer may be
6 found to have breached the duty to defend under the circumstances
7 listed in this subsection.

8 4. Where an insurer offers a defense, provides a defense,
9 or refuses to withdraw a reservation of rights while providing a
10 defense, the insured may not use that as a basis to avoid any
11 duties of the insured set forth in the insurance contract,
12 including any duty of the insured to cooperate with the insurer.

13 5. Nothing in this section shall be construed to create any
14 obligation to defend or indemnify not established by the
15 insurance contract.

16 6. Nothing in this section shall change the obligations an
17 insurer may have with regard to the payment of minimum limits
18 under the Missouri motor vehicle financial responsibility law
19 prescribed in section 303.190.

20 7. This section does not apply to any insurance contract
21 which does not contain an express duty to defend.

22 8. Notwithstanding the provisions set forth in this
23 section, any reservation of rights sent within sixty days of the
24 effective date of this section shall meet the requirements of
25 subdivision (2) of subsection 2 of this section.

26 375.418. If an insurer breaches its duty to defend, unless
27 there is a final adjudication of bad faith, the insurer's
28 liability for any judgment against the insured or any reasonable

1 settlement made by the insured, shall be limited to the
2 applicable limits of liability of the insurance contract, and
3 reasonable attorney fees and statutory court costs incurred by
4 the insured in conducting the defense of the suit. In applying
5 this section, it is the intent of the general assembly to modify
6 any previous case law which holds or otherwise suggests that a
7 breach of the duty to defend, without a final adjudication of bad
8 faith, allows for an award of damages in excess of the applicable
9 limits of liability stated in the insurance contract, including
10 but not limited to, the holding contained in *Columbia Cas. Co. v.*
11 *HIAR Holding, LLC*, 411 S.W.3d 258 (Mo.banc 2013). This section
12 shall apply to all causes of actions, suits, and claims unless
13 there has been a final judgment entered against the insurer
14 before the effective date of this section holding that the
15 insurer breached its duty to defend the insured.