

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 49
100TH GENERAL ASSEMBLY

Reported from the Committee on Government Reform, February 7, 2019, with recommendation that the Senate Committee Substitute do pass.

0528S.02C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 435.415 and 537.065, RSMo, and to enact in lieu thereof two new sections relating to enforcement of judgments and decrees against insurance companies.

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Section A. Sections 435.415 and 537.065, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 435.415 and 537.065, to read as follows: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 award as provided in this section shall not be binding on any liability insurer, admissible in evidence in any lawsuit against any liability insurer for any party to an award, or provide the basis for any judgment or decree, including any garnishment, against any liability insurer, unless such liability insurer has also agreed in writing to the arbitration proceeding. Any arbitration award or any judgment or decree confirming, modifying, or correcting an award under this section 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 required under section 435.350. Unless otherwise required by contract, a liability insurer's election not to participate in an arbitration proceeding shall not**

19 constitute, nor be construed to be, bad faith. Nothing in this section
20 shall apply to any arbitration award arising out of an arbitration
21 agreement preceding the date of the injury or loss on which an
22 arbitration award is based.

23 3. As used in this section, the term "insurer" shall include any
24 entity which is subject to sections 537.700 to 537.756 or which provides
25 risk management services to any public or private entity.

537.065. 1. Any person having an unliquidated claim for damages against
2 a tort-feasor, on account of personal injuries, bodily injuries, or death, provided
3 that, such tort-feasor's insurer or indemnitor has the opportunity to defend the
4 tort-feasor without reservation but refuses to do so, may enter into a contract
5 with such tort-feasor or any insurer on his or her behalf or both, whereby, in
6 consideration of the payment of a specified amount, the person asserting the
7 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
9 her will levy execution, by garnishment or as otherwise provided by law, except
10 against the specific assets listed in the contract and except against any insurer
11 which insures the legal liability of the tort-feasor for such damage and which
12 insurer is not excepted from execution, garnishment or other legal procedure by
13 such contract. Execution or garnishment proceedings in aid thereof shall lie only
14 as to assets of the tort-feasor specifically mentioned in the contract or the insurer
15 or insurers not excluded in such contract. Such contract, when properly
16 acknowledged by the parties thereto, may be recorded in the office of the recorder
17 of deeds in any county where a judgment may be rendered, or in the county of the
18 residence of the tort-feasor, or in both such counties, and if the same is so
19 recorded then such tort-feasor's property, except as to the assets specifically listed
20 in the contract, shall not be subject to any judgment lien as the result of any
21 judgment rendered against the tort-feasor, arising out of the transaction for
22 which the contract is entered into.

23 2. Before a judgment may be entered against any tort-feasor after such
24 tort-feasor has entered into a contract under this section, the insurer or insurers
25 shall be provided with written notice of the execution of the contract and shall
26 have thirty days after receipt of such notice to intervene as a matter of right in
27 any pending lawsuit involving the claim for damages. **Upon intervention**
28 **under this section, the intervenor shall have all rights afforded**
29 **defendants under the Missouri rules of civil procedure, including but**

30 not limited to the right to conduct discovery, the right to engage in
31 motion practice, and the right to a trial by jury. The intervenor shall
32 also have the right to assert any rights or raise any defenses available
33 to the tort-feasor and to assert any rights or raise any defenses that
34 would have been available to the tort-feasor in the absence of the
35 contract entered into under this section or other agreement between
36 the parties to that contract. However, nothing in this section shall
37 alter or reduce the intervening insurer's obligations to any insureds
38 other than the tort-feasor, including any co-insureds of the defendant
39 tort-feasor.

40 3. The provisions of this section shall apply to any covenant not to execute
41 or any contract to limit recovery to specified assets, regardless of whether it is
42 referred to as a contract under this section.

43 4. Nothing in this section shall be construed to prohibit an insured from
44 bringing a separate action asserting that the insurer acted in bad faith.

45 5. As used in this section, the term "insurer" shall include any
46 entity which is subject to sections 537.700 to 537.756 or which provides
47 risk management services to any public or private entity.

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