

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR

HOUSE BILL NO. 345

101ST GENERAL ASSEMBLY

1228S.02T

2021

AN ACT

To repeal sections 435.415 and 537.065, RSMo, and to enact in lieu thereof two new sections relating to civil actions.

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Section A. Sections 435.415 and 537.065, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 435.415 and 537.065, to read as follows:

2 435.415. **1. Except as provided in subsection 2 of this section,** upon the granting of
2 an order confirming, modifying or correcting an award, judgment or decree shall be entered in
3 conformity therewith and be enforced as any other judgment or decree. Costs of the application
4 and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

5 **2. Any arbitration award for personal injury, bodily injury, or death or any**
6 **judgment or decree entered on an arbitration award for personal injury, bodily injury, or**
7 **death shall not be binding on any insurer, shall not be admissible in evidence in any lawsuit**
8 **against any insurer for any party to an arbitration award, and shall not provide the basis**
9 **for any judgment or decree, including any garnishment, against any insurer, unless the**
10 **insurer has agreed in writing to the arbitration proceeding. Any arbitration award for**
11 **personal injury, bodily injury, or death or any judgment or decree confirming, modifying,**
12 **or correcting any arbitration award for personal injury, bodily injury, or death shall not**
13 **be subject to garnishment, enforcement, or collection from any insurer unless the insurer**
14 **has agreed in writing to the written arbitration agreement. Unless otherwise required by**
15 **the insurance contract, an insurer's election not to participate in an arbitration proceeding**
16 **shall not constitute, nor be construed to be, bad faith. This section shall not apply to any**

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 **arbitration required by statute or arising out of an arbitration agreement preceding the**
18 **date of the injury or loss which is the subject of the arbitration.**

19 **3. As used in this section, the term "insurer" shall include any entity authorized to**
20 **transact liability insurance business in this state including, but not limited to, any liability**
21 **insurance company organized, incorporated, or doing business pursuant to the provisions**
22 **of chapter 379, any entity formed pursuant to section 537.620, any entity which is subject**
23 **to sections 537.700 to 537.756, or any entity which provides risk management services to**
24 **any public or private entity.**

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

21 ~~2. [Before a judgment may be entered against any tort-feasor after such tort-feasor has~~
22 ~~entered into a contract under this section, the insurer or insurers shall be provided with written~~
23 ~~notice of the execution of the contract and shall have thirty days after receipt of such notice to~~
24 ~~intervene as a matter of right in any pending lawsuit involving the claim for damages]~~ **If any**
25 **action seeking a judgment on the claim against the tort-feasor is pending at the time of the**
26 **execution of any contract entered into under this section, then, within thirty days after such**
27 **execution, the tort-feasor shall provide his or her insurer or insurers with a copy of the**
28 **executed contract and a copy of any such action. If any action seeking a judgment on the**

29 **claim against the tort-feasor is pending at the time of the execution of any contract entered**
30 **into under this section but is thereafter dismissed, then, within thirty days after the refileing**
31 **of that action or the filing of any subsequent action arising out of the claim for damages**
32 **against the tort-feasor, the tort-feasor shall provide his or her insurer or insurers with a**
33 **copy of the executed contract and a copy of the refiled or subsequently filed action seeking**
34 **a judgment on the claim against the tort-feasor. If no action seeking a judgment on the**
35 **claim against the tort-feasor is pending at the time of the execution of any contract entered**
36 **into under this section, then, within thirty days after the tort-feasor receives notice of any**
37 **subsequent action, by service of process or otherwise, the tort-feasor shall provide his or**
38 **her insurer or insurers with a copy of the executed contract and a copy of any action**
39 **seeking a judgment on the claim against the tort-feasor.**

40 **3. No judgment shall be entered against any tort-feasor after such tort-feasor has**
41 **entered into a contract under this section for at least thirty days after the insurer or**
42 **insurers have received written notice as provided in subsection 2 of this section.**

43 **4. Any insurer or insurers who receive notice pursuant to this section shall have the**
44 **unconditional right to intervene in any pending civil action involving the claim for damages**
45 **within thirty days after receipt of such notice. Upon intervention pursuant to this section,**
46 **the intervenor shall have all rights afforded to defendants under the Missouri rules of civil**
47 **procedure and reasonable and sufficient time to meaningfully assert its position including,**
48 **but not limited to, the right and time to conduct discovery, the right and time to engage in**
49 **motion practice, and the right to a trial by jury and sufficient time to prepare for trial. No**
50 **stipulations, scheduling orders, or other orders affecting the rights of an intervenor and**
51 **entered prior to intervention shall be binding upon the intervenor. However, nothing in**
52 **this section shall alter or reduce the intervening insurer's obligations to any insureds other**
53 **than the tort-feasor, including any co-insureds of the defendant tort-feasor.**

54 **[3-] 5. The provisions of this section shall apply to any covenant not to execute or any**
55 **contract to limit recovery to specified assets, regardless of whether it is referred to as a contract**
56 **under this section.**

57 **6. All terms of any covenant not to execute or of any contract to limit recovery to**
58 **specified assets, regardless of whether it is referred to as a contract under this section, shall**
59 **be in writing and signed by the parties to the covenant or contract. No unwritten term of**
60 **any covenant not to execute or of any contract to limit recovery to specified assets,**
61 **regardless of whether it is referred to as a contract under this section, shall be enforceable**
62 **against any party to the covenant or contract, the insurer of any party to the covenant or**
63 **contract, or any other person or entity.**

64 [4-] 7. Nothing in this section shall be construed to prohibit an insured from bringing a
65 separate action asserting that the insurer acted in bad faith. **In any such action for bad faith,**
66 **any agreement between the tort-feasor and the claimant, including any contract under this**
67 **section, shall be admissible in evidence. The exercise of any rights under this section shall**
68 **not constitute, nor be construed to be, bad faith.**

69 8. As used in this section, the term "insurer" shall include any entity authorized to
70 transact liability insurance business in this state including, but not limited to, any liability
71 insurance company organized, incorporated, or doing business pursuant to the provisions
72 of chapter 379, any entity formed pursuant to section 537.620, any entity which is subject
73 to sections 537.700 to 537.756, or any entity which provides risk management services to
74 any public or private entity.

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