

SENATE SUBSTITUTE

FOR

SENATE BILL NO. 3

AN ACT

To repeal sections 435.415, 516.120, 516.140, and 537.065, RSMo, and to enact in lieu thereof four 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Section A. Sections 435.415, 516.120, 516.140, and 537.065, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 435.415, 516.120, 516.140, and 537.065, to read as follows: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 arbitration award shall not be binding on any insurer, shall not be admissible in evidence in any lawsuit against any insurer for any party to an arbitration award, and shall not provide the basis for any judgment or decree, including any garnishment, against any insurer, unless the insurer has agreed in writing to the arbitration proceeding. Any arbitration award or any judgment or decree confirming, modifying, or correcting any arbitration award shall not be subject to garnishment, enforcement, or collection from any insurer unless the insurer has agreed in writing to the written arbitration agreement. Unless otherwise required by the insurance contract, an insurer's

21 election not to participate in an arbitration proceeding
22 shall not constitute, nor be construed to be, bad faith.
23 This section shall not apply to any arbitration required by
24 statute or arising out of an arbitration agreement preceding
25 the date of the injury or loss which is the subject of the
26 arbitration.

27 3. As used in this section, the term "insurer" shall
28 include any entity authorized to transact liability
29 insurance business in this state including, but not limited
30 to, any liability insurance company organized, incorporated,
31 or doing business pursuant to the provisions of chapter 379,
32 any entity formed pursuant to section 537.620, any entity
33 which is subject to sections 537.700 to 537.756, or any
34 entity which provides risk management services to any public
35 or private entity.

516.120. Within five years:

2 (1) All actions upon contracts, obligations or
3 liabilities, express or implied, except those mentioned in
4 section 516.110 and section 516.140, and except upon
5 judgments or decrees of a court of record, and except where
6 a different time is herein limited;

7 (2) An action upon a liability created by a statute
8 other than a penalty or forfeiture;

9 (3) An action for trespass on real estate;

10 (4) An action for taking, detaining or injuring any
11 goods or chattels, including actions for the recovery of
12 specific personal property[, or for any other injury to the
13 person or rights of another, not arising on contract and not
14 herein otherwise enumerated];

15 (5) An action for relief on the ground of fraud, the
16 cause of action in such case to be deemed not to have
17 accrued until the discovery by the aggrieved party, at any
18 time within ten years, of the facts constituting the fraud.

516.140. 1. Within two years:

2 (1) An action for libel, slander, injurious falsehood,
3 assault, battery, false imprisonment, criminal conversation,
4 malicious prosecution or actions brought under section
5 290.140[.];

6 (2) An action by an employee for the payment of unpaid
7 minimum wages, unpaid overtime compensation or liquidated
8 damages by reason of the nonpayment of minimum wages or
9 overtime compensation, and for the recovery of any amount
10 under and by virtue of the provisions of the Fair Labor
11 Standards Act of 1938 and amendments thereto, such act being
12 an act of Congress, shall be brought within two years after
13 the cause accrued;

14 (3) An action for any injury to the person or rights
15 of another, not arising on contract and not otherwise
16 provided for by law, including actions for personal injury
17 or bodily injury;

18 (4) An action against an insurer relating to uninsured
19 motorist coverage or underinsured motorist coverage,
20 including any action to enforce such coverage.

21 2. The provisions of subdivisions (3) and (4) of
22 subsection 1 of this section shall only apply to causes of
23 action that accrue on or after August 28, 2021.

537.065. 1. Any person having an unliquidated claim
2 for damages against a tort-feasor, on account of personal
3 injuries, bodily injuries, or death[, provided that, such
4 tort-feasor's insurer or indemnitor has the opportunity to
5 defend the tort-feasor without reservation but refuses to do
6 so,] may enter into a contract with such tort-feasor or any
7 insurer on his or her behalf or both if the insurer has
8 refused to withdraw a reservation of rights or declined
9 coverage for such unliquidated claim, whereby, in
10 consideration of the payment of a specified amount, the

11 person asserting the claim agrees that in the event of a
12 judgment against the tort-feasor, neither such person nor
13 any other person, firm, or corporation claiming by or
14 through him or her will levy execution, by garnishment or as
15 otherwise provided by law, except against the specific
16 assets listed in the contract and except against any insurer
17 which insures the legal liability of the tort-feasor for
18 such damage and which insurer is not excepted from
19 execution, garnishment or other legal procedure by such
20 contract. Execution or garnishment proceedings in aid
21 thereof shall lie only as to assets of the tort-feasor
22 specifically mentioned in the contract or the insurer or
23 insurers not excluded in such contract. Such contract, when
24 properly acknowledged by the parties thereto, may be
25 recorded in the office of the recorder of deeds in any
26 county where a judgment may be rendered, or in the county of
27 the residence of the tort-feasor, or in both such counties,
28 and if the same is so recorded then such tort-feasor's
29 property, except as to the assets specifically listed in the
30 contract, shall not be subject to any judgment lien as the
31 result of any judgment rendered against the tort-feasor,
32 arising out of the transaction for which the contract is
33 entered into.

34 2. [Before a judgment may be entered against any tort-
35 feasor after such tort-feasor has entered into a contract
36 under this section, the insurer or insurers shall be
37 provided with written notice of the execution of the
38 contract and shall have thirty days after receipt of such
39 notice to intervene as a matter of right in any pending
40 lawsuit involving the claim for damages] If a tort-feasor
41 rejects an insurer's defense of any claim that is the
42 subject of a contract under this section, whether or not
43 such defense was subject to a reservation of rights, then

44 any judgment or portion of any judgment, including any
45 findings of fact or conclusions of law, on that claim:

46 (1) Shall not be subject to garnishment, enforcement,
47 or collection from any such insurer; and

48 (2) Shall not be binding on any such insurer or
49 admissible in an action against any such insurer.

50 The provisions of this subsection shall not apply to a
51 contract under this section entered into by an individual or
52 entity whose aggregate premiums for all property and
53 casualty insurance, excluding only workers' compensation
54 premiums, in the twelve month period prior to the date of
55 the contract under this section were equal to or greater
56 than one hundred thousand dollars, whether or not such
57 premiums were paid for property and casualty insurance that
58 is subject to the contract under this section.

59 3. No party to a contract under this section may
60 assign any right, claim, or cause of action for bad faith,
61 breach of fiduciary duty, or extracontractual liability
62 arising out of any unliquidated claim for damages that is
63 subject to such contract.

64 4. If any action seeking a judgment on the claim
65 against the tort-feasor is pending at the time of the
66 execution of any contract entered into under this section,
67 then, within thirty days after such execution, the tort-
68 feasor shall provide his or her insurer or insurers with a
69 copy of the executed contract and a copy of any such
70 action. If any action seeking a judgment on the claim
71 against the tort-feasor is pending at the time of the
72 execution of any contract entered into under this section
73 but is thereafter dismissed, then, within thirty days after
74 the refiling of that action or the filing of any subsequent
75 action arising out of the claim for damages against the tort-
76 feasor, the tort-feasor shall provide his or her insurer or

77 insurers with a copy of the executed contract and a copy of
78 the refiled or subsequently filed action seeking a judgment
79 on the claim against the tort-feasor. If no action seeking
80 a judgment on the claim against the tort-feasor is pending
81 at the time of the execution of any contract entered into
82 under this section, then, within thirty days after the tort-
83 feasor receives notice of any subsequent action, by service
84 of process or otherwise, the tort-feasor shall provide his
85 or her insurer or insurers with a copy of the executed
86 contract and a copy of any action seeking a judgment on the
87 claim against the tort-feasor.

88 5. No judgment shall be entered against any tort-
89 feasor after such tort-feasor has entered into a contract
90 under this section for at least thirty days after the
91 insurer or insurers have received written notice as provided
92 in subsection 4 of this section.

93 6. Any insurer or insurers who receive notice pursuant
94 to this section shall have the unconditional right to
95 intervene in any pending civil action involving the claim
96 for damages within thirty days after receipt of such
97 notice. Upon intervention pursuant to this section, the
98 intervenor shall have all rights afforded to defendants
99 under the Missouri rules of civil procedure and reasonable
100 and sufficient time to meaningfully assert its position
101 including, but not limited to, the right and time to conduct
102 discovery, the right and time to engage in motion practice,
103 and the right to a trial by jury and sufficient time to
104 prepare for trial. No stipulations, scheduling orders, or
105 other orders affecting the rights of an intervenor and
106 entered prior to intervention shall be binding upon the
107 intervenor. The intervenor shall also have the right to
108 assert any rights or raise any defenses available to the
109 tort-feasor and to assert any rights or raise any defenses

110 that would have been available to the tort-feasor in the
111 absence of the contract entered into under this section or
112 other agreement between the parties to that contract.
113 However, nothing in this section shall alter or reduce the
114 intervening insurer's obligations to any insureds other than
115 the tort-feasor, including any co-insureds of the defendant
116 tort-feasor.

117 [3.] 7. The provisions of this section shall apply to
118 any covenant not to execute or any contract to limit
119 recovery to specified assets, regardless of whether it is
120 referred to as a contract under this section.

121 8. All terms of any covenant not to execute or of any
122 contract to limit recovery to specified assets, regardless
123 of whether it is referred to as a contract under this
124 section, shall be in writing and signed by the parties to
125 the covenant or contract. No unwritten term of any covenant
126 not to execute or of any contract to limit recovery to
127 specified assets, regardless of whether it is referred to as
128 a contract under this section, shall be enforceable against
129 any party to the covenant or contract, the insurer of any
130 party to the covenant or contract, or any other person or
131 entity.

132 [4.] 9. Nothing in this section shall be construed to
133 prohibit an insured from bringing a separate action
134 asserting that the insurer acted in bad faith. In any such
135 action for bad faith, any agreement between the tort-feasor
136 and the claimant, including any contract under this section,
137 shall be admissible in evidence. The exercise of any rights
138 under this section shall not constitute, nor be construed to
139 be, bad faith.

140 10. Nothing in this section shall be construed to
141 prohibit an insurer from bringing a separate action for
142 declaratory judgment, and if any such action is commenced

143 within thirty days after the issuance of any written
144 declination of coverage or reservation of rights, no
145 contract as provided in this section shall be effective for
146 a period of one year from the date the insurer files a
147 declaratory action to determine any coverage obligations.

148 11. In any claim for bad faith, breach of fiduciary
149 duty, or extracontractual liability of any kind against any
150 insurer arising out of a claim that is the subject of an
151 agreement under this section, the damages in addition to the
152 amount due as provided in any contract of insurance shall be
153 limited to amounts not to exceed twenty percent of the first
154 one thousand five hundred dollars of any covered loss and
155 ten percent of the amount of any covered loss in excess of
156 one thousand five hundred dollars and a reasonable
157 attorney's fee, as provided in sections 375.296 and 375.420.

158 12. As used in this section, the term "insurer" shall
159 include any entity authorized to transact liability
160 insurance business in this state including, but not limited
161 to, any liability insurance company organized, incorporated,
162 or doing business pursuant to the provisions of chapter 379,
163 any entity formed pursuant to section 537.620, any entity
164 which is subject to sections 537.700 to 537.756, or any
165 entity which provides risk management services to any public
166 or private entity.