

SENATE SUBSTITUTE
FOR
HOUSE BILL NO. 345
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Section A. Sections 435.415 and 537.065, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 435.415 and 537.065, to read as follows: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 for personal injury, bodily injury, or death or any judgment or decree entered on an arbitration award for personal injury, bodily injury, or death 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 for personal injury, bodily injury, or death or any judgment or decree confirming, modifying, or correcting any arbitration award for personal injury, bodily injury, or death shall not be subject to garnishment, enforcement, or collection from any insurer unless the

22 insurer has agreed in writing to the written arbitration
23 agreement. Unless otherwise required by the insurance
24 contract, an insurer's election not to participate in an
25 arbitration proceeding shall not constitute, nor be
26 construed to be, bad faith. This section shall not apply to
27 any arbitration required by statute or arising out of an
28 arbitration agreement preceding the date of the injury or
29 loss which is the subject of the arbitration.

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

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 any action
41 seeking a judgment on the claim against the tort-feasor is
42 pending at the time of the execution of any contract entered
43 into under this section, then, within thirty days after such
44 execution, the tort-feasor shall provide his or her insurer
45 or insurers with a copy of the executed contract and a copy
46 of any such action. If any action seeking a judgment on the
47 claim against the tort-feasor is pending at the time of the
48 execution of any contract entered into under this section
49 but is thereafter dismissed, then, within thirty days after

50 the refiling of that action or the filing of any subsequent
51 action arising out of the claim for damages against the tort-
52 feasor, the tort-feasor shall provide his or her insurer or
53 insurers with a copy of the executed contract and a copy of
54 the refiled or subsequently filed action seeking a judgment
55 on the claim against the tort-feasor. If no action seeking
56 a judgment on the claim against the tort-feasor is pending
57 at the time of the execution of any contract entered into
58 under this section, then, within thirty days after the tort-
59 feasor receives notice of any subsequent action, by service
60 of process or otherwise, the tort-feasor shall provide his
61 or her insurer or insurers with a copy of the executed
62 contract and a copy of any action seeking a judgment on the
63 claim against the tort-feasor.

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

69 4. Any insurer or insurers who receive notice pursuant
70 to this section shall have the unconditional right to
71 intervene in any pending civil action involving the claim
72 for damages within thirty days after receipt of such
73 notice. Upon intervention pursuant to this section, the
74 intervenor shall have all rights afforded to defendants
75 under the Missouri rules of civil procedure and reasonable
76 and sufficient time to meaningfully assert its position
77 including, but not limited to, the right and time to conduct
78 discovery, the right and time to engage in motion practice,
79 and the right to a trial by jury and sufficient time to
80 prepare for trial. No stipulations, scheduling orders, or
81 other orders affecting the rights of an intervenor and
82 entered prior to intervention shall be binding upon the

83 intervenor. However, nothing in this section shall alter or
84 reduce the intervening insurer's obligations to any insureds
85 other than the tort-feasor, including any co-insureds of the
86 defendant tort-feasor.

87 [3.] 5. The provisions of this section shall apply to
88 any covenant not to execute or any contract to limit
89 recovery to specified assets, regardless of whether it is
90 referred to as a contract under this section.

91 6. All terms of any covenant not to execute or of any
92 contract to limit recovery to specified assets, regardless
93 of whether it is referred to as a contract under this
94 section, shall be in writing and signed by the parties to
95 the covenant or contract. No unwritten term of any covenant
96 not to execute or of any contract to limit recovery to
97 specified assets, regardless of whether it is referred to as
98 a contract under this section, shall be enforceable against
99 any party to the covenant or contract, the insurer of any
100 party to the covenant or contract, or any other person or
101 entity.

102 [4.] 7. Nothing in this section shall be construed to
103 prohibit an insured from bringing a separate action
104 asserting that the insurer acted in bad faith. In any such
105 action for bad faith, any agreement between the tort-feasor
106 and the claimant, including any contract under this section,
107 shall be admissible in evidence. The exercise of any rights
108 under this section shall not constitute, nor be construed to
109 be, bad faith.

110 8. As used in this section, the term "insurer" shall
111 include any entity authorized to transact liability
112 insurance business in this state including, but not limited
113 to, any liability insurance company organized, incorporated,
114 or doing business pursuant to the provisions of chapter 379,
115 any entity formed pursuant to section 537.620, any entity

116 which is subject to sections 537.700 to 537.756, or any
117 entity which provides risk management services to any public
118 or private entity.