

SENATE BILL NO. 312

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

0349S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 537.058, RSMo, and to enact in lieu thereof one new section relating to settlement demands.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 537.058, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 537.058,
3 to read as follows:

537.058. 1. As used in this section, the following
2 terms shall mean:

3 (1) "Extracontractual damages", any amount of damage
4 that exceeds the total available limit of liability
5 insurance for all of a liability insurer's liability
6 insurance policies applicable to a claim for personal
7 injury, bodily injury, or wrongful death;

8 (2) "[Time-limited] **Settlement** demand", any offer to
9 settle any claim for personal injury, bodily injury, or
10 wrongful death made by or on behalf of a claimant to a tort-
11 feisor with a liability insurance policy for purposes of
12 settling a claim against such tort-feisor within the
13 insurer's limit of liability insurance[, which by its terms
14 must be accepted within a specified period of time];

15 (3) "Tort-feisor", any person claimed to have caused
16 or contributed to cause personal injury, bodily injury, or
17 wrongful death to a claimant.

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 2. [A time-limited] In any action alleging
19 **extracontractual damages against the tort-feasor's liability**
20 **insurer, any prior settlement** demand to settle any claim for
21 personal injury, bodily injury, or wrongful death shall **not**
22 **be considered to have been a reasonable opportunity to**
23 **settle the claim unless the settlement demand was in**
24 writing, [shall reference] **referenced** this section, [shall
25 **be]** sent **by** certified mail **with** return-receipt requested to
26 the tort-feasor's liability insurer, **remained open for**
27 **acceptance by the liability insurer for at least ninety days**
28 **from the date such settlement demand was received by the**
29 **liability insurer, and [shall contain] contained** the
30 following material terms:

31 (1) The time period within which the offer shall
32 remain open for acceptance by the tort-feasor's liability
33 insurer, [which shall not be less] **if the time period for**
34 **acceptance is more** than ninety days from the date such
35 demand is received by the liability insurer;

36 (2) The amount of monetary payment requested or a
37 request for the applicable policy limits;

38 (3) The date and location of the loss;

39 (4) The claim number, if known;

40 (5) A description of all known injuries sustained by
41 the claimant;

42 (6) The party or parties to be released if such [time-
43 **limited] settlement** demand is accepted;

44 (7) A description of the claims to be released if such
45 [time-limited] **settlement** demand is accepted; and

46 (8) An offer of unconditional release for the
47 liability insurer's insureds from all present and future
48 liability for that occurrence under section 537.060.

49 3. Such **[time-limited] settlement** demand shall be
50 accompanied by:

51 (1) A list of the names and addresses of health care
52 providers who provided treatment to or evaluation of the
53 claimant or decedent for injuries suffered from the date of
54 injury until the date of the **[time-limited] settlement**
55 demand, and HIPAA compliant written authorizations
56 sufficient to allow the liability insurer to obtain such
57 records from the health care providers listed; and

58 (2) A list of the names and addresses of all the
59 claimant's employers at the time the claimant was first
60 injured until the date of the **[time-limited] settlement**
61 demand, and written authorizations sufficient to allow the
62 liability insurer to obtain such records from all employers
63 listed, if the claimant asserts a loss of wages, earnings,
64 compensation, or profits however denominated.

65 4. If a liability insurer with the right to settle on
66 behalf of an insured receives a **[time-limited] settlement**
67 demand, such insurer may accept the **[time-limited]**
68 **settlement** demand by providing written acceptance of the
69 material terms outlined in subsection 2 of this section,
70 delivered or postmarked to the claimant or the claimant's
71 representative within the time period **[set in the time-**
72 **limited demand] in which the settlement demand is open for**
73 **acceptance by the liability insurer, which in no event shall**
74 **be less than ninety days.**

75 5. Nothing in this section shall prohibit a claimant
76 making a **[time-limited] settlement** demand from requiring
77 payment within a specified period; provided, however, that
78 such period for payment shall not be less than ten days
79 after the insurer's receipt of a fully executed

80 unconditional release under section 537.060 as specified in
81 subsection 2 of this section.

82 6. Nothing in this section applies to offers or
83 demands or **[time-limited] settlement** demands issued within
84 ninety days of the trial by jury of any claim on which a
85 lawsuit has been filed.

86 7. In any lawsuit filed by a claimant as an assignee
87 of the tort-feasor or by the tort-feasor for the benefit of
88 the claimant, a **[time-limited] settlement** demand that does
89 not comply with the terms of this section shall not be
90 considered as a reasonable opportunity to settle for the
91 insurer and shall not be admissible in any lawsuit alleging
92 extracontractual damages against the tort-feasor's liability
93 insurer.

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