

SECOND REGULAR SESSION

SENATE BILL NO. 726

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3341S.02I

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Section A. Sections 435.415 and 537.065, RSMo, are repealed and two new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

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

6 **2. Any arbitration award or any judgment or decree entered on**
7 **an award shall not be binding on any liability insurer, admissible in**
8 **evidence in any lawsuit against any liability insurer for any party to an**
9 **award, or provide the basis for any judgment or decree, including any**
10 **garnishment, against any liability insurer, unless such liability insurer**
11 **has also agreed in writing to the arbitration proceeding. Any**
12 **arbitration award or any judgment or decree confirming, modifying, or**
13 **correcting any arbitration award shall not be subject to garnishment,**
14 **enforcement, or collection from any liability insurer unless the liability**
15 **insurer has agreed in writing to the written arbitration**
16 **agreement. Unless otherwise required by contract, a liability insurer's**
17 **election not to participate in an arbitration proceeding shall not**
18 **constitute, nor be construed to be, bad faith. Nothing in this section**

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

19 shall apply to any arbitration award arising out of an arbitration
20 agreement preceding the date of the injury or loss on which an
21 arbitration award is based.

22 3. As used in this section, the term "insurer" shall mean any
23 entity authorized to transact liability insurance business in this state,
24 including but not limited to, any liability insurance company organized,
25 incorporated, or doing business under the provisions of chapter 379,
26 any entity formed pursuant to section 537.620, any entity which is
27 subject to sections 537.700 to 537.756, or any entity which provides risk
28 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 **both** the execution of the contract and
26 **the pendency or later filing of the civil action where that judgment is**

27 **sought and shall have [thirty days after receipt of such notice to intervene as**
28 **a matter of right in any pending lawsuit involving the claim for damages] the**
29 **unconditional right to intervene in any pending civil action involving**
30 **the claim for damages within thirty days after receipt of the later of**
31 **either such notice. Upon intervention under this section, the**
32 **intervenor shall have all rights afforded defendants under the Missouri**
33 **rules of civil procedure, including but not limited to the right to**
34 **conduct discovery, the right to engage in motion practice, and the right**
35 **to a trial by jury. The intervenor shall also have the right to assert any**
36 **rights or raise any defenses available to the tort-feasor and to assert**
37 **any rights or raise any defenses that would have been available to the**
38 **tort-feasor in the absence of the contract entered into under this**
39 **section or other agreement between the parties to that**
40 **contract. However, nothing in this section shall alter or reduce the**
41 **intervening insurer's obligations to any insureds other than the tort-**
42 **feasor, including any co-insureds of the defendant tort-feasor.**

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

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

48 5. As used in this section, the term "insurer" shall mean any
49 entity authorized to transact liability insurance business in this state,
50 including but not limited to, any liability insurance company organized,
51 incorporated, or doing business under the provisions of chapter 379,
52 any entity formed pursuant to section 537.620, any entity which is
53 subject to sections 537.700 to 537.756, or any entity which provides risk
54 management services to any public or private entity.

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