

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 726

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Section A. Sections 435.415 and 537.065, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 435.415 and 537.065, to read as follows: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 or any judgment or decree entered on an award shall not be binding on any liability insurer, be admissible in evidence in any lawsuit against any liability insurer for any party to an award, or provide the basis for any judgment or decree, including any garnishment, against any liability insurer, unless the liability 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 liability insurer unless the liability insurer has agreed in writing to the written arbitration agreement. Unless otherwise required by the insurance contract, a liability insurer's election not to participate in an arbitration proceeding shall not constitute, nor be construed to be, bad faith. Nothing in this section shall apply to any arbitration award arising out of an arbitration agreement preceding the date of the injury or loss on which an arbitration award is based.

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

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

of a judgment against the tort-feasor, neither such person nor any other person, firm, or corporation claiming by or through him or her will levy execution, by garnishment or as otherwise provided by law, except against the specific assets listed in the contract and except against any insurer which insures the legal liability of the tort-feasor for such damage and which insurer is not excepted from execution, garnishment or other legal procedure by such contract. Execution or garnishment proceedings in aid thereof shall lie only as to assets of the tort-feasor specifically mentioned in the contract or the insurer or insurers not excluded in such contract. Such contract, when properly acknowledged by the parties thereto, may be recorded in the office of the recorder of deeds in any county where a judgment may be rendered, or in the county of the residence of the tort-feasor, or in both such counties, and if the same is so recorded then such tort-feasor's property, except as to the assets specifically listed in the contract, shall not be subject to any judgment lien as the result of any judgment rendered against the tort-feasor, arising out of the transaction for which the contract is entered into.

2. [Before a judgment may be entered against any tort-feasor after such tort-feasor has entered into a contract under this section, the insurer or insurers shall be provided with written notice of the execution of the contract and shall have thirty days after receipt of such notice to intervene as a matter of right in any pending lawsuit involving the claim for damages] If any action seeking a judgment on the claim against the tort-feasor is pending at the time of the execution of any

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

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

4. Any insurer or insurers who receive notice pursuant to this section shall have the unconditional right to intervene in any pending civil action involving the claim for damages within

thirty days after receipt of such notice. Upon intervention pursuant to this section, the intervenor shall have all rights afforded to defendants under the Missouri rules of civil procedure including, but not limited to, the right to conduct discovery, the right to engage in motion practice, and the right to a trial by jury. The intervenor shall also have the right to assert any rights or raise any defenses available to the tort-feasor and to assert any rights or raise any defenses that would have been available to the tort-feasor in the absence of the contract entered into under this section or other agreement between the parties to that contract. However, nothing in this section shall alter or reduce the intervening insurer's obligations to any insureds other than the tort-feasor, including any co-insureds of the defendant tort-feasor.

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

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

[4.] 7. Nothing in this section shall be construed to prohibit an insured from bringing a separate action asserting that the insurer acted in bad faith. In any such action for bad faith, any agreement between the tort-feasor and the insured, including any contract under this section, shall be admissible in evidence. The exercise of any rights under this section shall not be construed to be bad faith.

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