

FIRST REGULAR SESSION

# HOUSE BILL NO. 120

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DEGROOT.

0557H.011

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

To repeal sections 435.415 and 537.065, RSMo, and to enact in lieu thereof two new sections relating to civil procedure.

*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Section A. Sections 435.415 and 537.065, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 435.415 and 537.065, to read as follows: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, a 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 as provided in this section shall not be binding on any liability insurer, 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 such liability insurer has also agreed in writing to the arbitration proceeding. Any arbitration award or any judgment or decree confirming, modifying, or correcting an award under this section 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 required under section 435.350. Unless otherwise required by contract, a liability insurer's election not to participate in an arbitration proceeding shall not constitute, nor be construed to be, bad faith.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17           **3. As used in this section, the term "insurer" shall include any entity that is subject**  
18 **to sections 537.700 to 537.756 or that provides risk management services to any public or**  
19 **private entity.**

537.065. 1. Any person having an unliquidated claim for damages against a tort-feasor,  
2 on account of personal injuries, bodily injuries, or death, provided that, such tort-feasor's insurer  
3 or indemnitor has the opportunity to defend the tort-feasor without reservation but refuses to do  
4 so, may enter into a contract with such tort-feasor or any insurer on his or her behalf or both,  
5 whereby, in consideration of the payment of a specified amount, the person asserting the claim  
6 agrees that in the event of a judgment against the tort-feasor, neither such person nor any other  
7 person, firm, or corporation claiming by or through him or her will levy execution, by  
8 garnishment or as otherwise provided by law, except against the specific assets listed in the  
9 contract and except against any insurer which insures the legal liability of the tort-feasor for such  
10 damage and which insurer is not excepted from execution, garnishment or other legal procedure  
11 by such contract. Execution or garnishment proceedings in aid thereof shall lie only as to assets  
12 of the tort-feasor specifically mentioned in the contract or the insurer or insurers not excluded  
13 in such contract. Such contract, when properly acknowledged by the parties thereto, may be  
14 recorded in the office of the recorder of deeds in any county where a judgment may be rendered,  
15 or in the county of the residence of the tort-feasor, or in both such counties, and if the same is  
16 so recorded then such tort-feasor's property, except as to the assets specifically listed in the  
17 contract, shall not be subject to any judgment lien as the result of any judgment rendered against  
18 the tort-feasor, arising out of the transaction for which the contract is entered into.

19           2. Before a judgment may be entered against any tort-feasor after such tort-feasor has  
20 entered into a contract under this section, the insurer or insurers shall be provided with written  
21 notice of the execution of the contract and shall have thirty days after receipt of such notice to  
22 intervene as a matter of right in any pending lawsuit involving the claim for damages. **Upon**  
23 **intervention under this section, the intervenor shall have all rights afforded to defendants**  
24 **under the Missouri rules of civil procedure including, but not limited to, the right to**  
25 **conduct discovery, the right to engage in motion practice, and the right to a trial by jury.**  
26 **The intervenor shall also have the right to assert any rights or raise any defenses available**  
27 **to the tort-feasor and to assert any rights or raise any defenses that would have been**  
28 **available to the tort-feasor in the absence of the contract entered into under this section or**  
29 **other agreement between the parties to that contract.**

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

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

35           **5. As used in this section, the term "insurer" shall include any entity that is subject**  
36 **to sections 537.700 to 537.756 or that provides risk management services to any public or**  
37 **private entity.**

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