

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2049
100TH GENERAL ASSEMBLY

Reported from the Committee on Government Reform, April 30, 2020, with recommendation that the Senate Committee Substitute do pass.

4800S.03C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 435.415, 537.037, and 537.065, RSMo, and to enact in lieu thereof three new sections relating to civil actions, with an emergency clause for a certain section.

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

Section A. Sections 435.415, 537.037, and 537.065, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 435.415,
3 537.037, and 537.065, to 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 arbitration award shall not be binding on any liability insurer, shall**
8 **not be admissible in evidence in any lawsuit against any liability**
9 **insurer for any party to an arbitration award, and shall not provide the**
10 **basis for any judgment or decree, including any garnishment, against**
11 **any liability insurer, unless the liability insurer has agreed in writing**
12 **to the arbitration proceeding. Any arbitration award or any judgment**
13 **or decree confirming, modifying, or correcting any arbitration award**
14 **shall not be subject to garnishment, enforcement, or collection from any**
15 **liability insurer unless the liability insurer has agreed in writing to the**

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

16 **written arbitration agreement. Unless otherwise required by its**
17 **insurance contract, a liability insurer's election not to participate in an**
18 **arbitration proceeding shall not constitute, nor be construed to be, bad**
19 **faith. This section shall not apply to any arbitration required by**
20 **statute or arising out of an arbitration agreement preceding the date**
21 **of the injury or loss which is the subject of the arbitration.**

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

537.037. 1. Any physician or surgeon, registered professional nurse or
2 licensed practical nurse licensed to practice in this state under the provisions of
3 chapter 334 or 335, or licensed to practice under the equivalent laws of any other
4 state and any person licensed as a mobile emergency medical technician under
5 the provisions of chapter 190, may:

6 (1) In good faith render emergency care or assistance, without
7 compensation, at the scene of an emergency or accident, and shall not be liable
8 for any civil damages for acts or omissions other than damages occasioned by
9 gross negligence or by willful or wanton acts or omissions by such person in
10 rendering such emergency care;

11 (2) In good faith render emergency care or assistance, without
12 compensation, to any minor involved in an accident, or in competitive sports, or
13 other emergency at the scene of an accident, without first obtaining the consent
14 of the parent or guardian of the minor, and shall not be liable for any civil
15 damages other than damages occasioned by gross negligence or by willful or
16 wanton acts or omissions by such person in rendering the emergency care.

17 2. Any other person who has been trained to provide first aid in a
18 standard recognized training program may, without compensation, render
19 emergency care or assistance to the level for which he or she has been trained,
20 at the scene of an emergency or accident, and shall not be liable for civil damages
21 for acts or omissions other than damages occasioned by gross negligence or by
22 willful or wanton acts or omissions by such person in rendering such emergency
23 care.

24 3. Any mental health professional, as defined in section 632.005, or
25 qualified counselor, as defined in section 631.005, or any practicing medical,
26 osteopathic, or chiropractic physician, or certified nurse practitioner, or
27 physicians' assistant may in good faith render suicide prevention interventions
28 at the scene of a threatened suicide and shall not be liable for any civil damages
29 for acts or omissions other than damages occasioned by gross negligence or by
30 willful or wanton acts or omissions by such person in rendering such suicide
31 prevention interventions.

32 4. Any other person may, without compensation, render suicide prevention
33 interventions at the scene of a threatened suicide and shall not be liable for civil
34 damages for acts or omissions other than damages occasioned by gross negligence
35 or by willful or wanton acts or omissions by such person in rendering such suicide
36 prevention interventions.

37 **5. Any health care provider who in good faith renders care or**
38 **assistance, with or without compensation, in connection with the**
39 **COVID-19 pandemic, including taking measures to coordinate, arrange**
40 **for, respond to, provide, or address issues related to the delivery of**
41 **health care services, shall not be liable for any civil damages for any**
42 **acts or omissions that occur during a period where there is in effect an**
43 **executive order issued by the governor of Missouri declaring that a**
44 **state of emergency exists, other than damages occasioned by gross**
45 **negligence or by willful or wanton acts or omissions by such provider**
46 **in rendering the care or assistance. For purposes of this subsection,**
47 **"health care provider" shall include:**

48 **(1) Any physician, hospital, health maintenance organization,**
49 **ambulatory surgical center, long-term care facility including those**
50 **licensed under chapter 198, dentist, registered or licensed practical**
51 **nurse, optometrist, podiatrist, pharmacist, chiropractor, professional**
52 **physical therapist, psychologist, physician-in-training, and any other**
53 **person or entity that provides health care services under the authority**
54 **of a license or certificate, and the employers or agents of any such**
55 **person or entity listed herein;**

56 **(2) Any individual, health care system, or other entity that takes**
57 **measures to coordinate, arrange for, respond to, provide, or address**
58 **issues related to the delivery of health care services; and**

59 **(3) Any individual permitted to provide health care services in**

60 **the state due to a declared public health emergency.**

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 **if the insurer
6 has refused to withdraw a reservation of rights or declined coverage
7 for such unliquidated claim**, whereby, in consideration of the payment of a
8 specified amount, the person asserting the claim agrees that in the event of a
9 judgment against the tort-feasor, neither such person nor any other person, firm,
10 or corporation claiming by or through him or her will levy execution, by
11 garnishment or as otherwise provided by law, except against the specific assets
12 listed in the contract and except against any insurer which insures the legal
13 liability of the tort-feasor for such damage and which insurer is not excepted from
14 execution, garnishment or other legal procedure by such contract. Execution or
15 garnishment proceedings in aid thereof shall lie only as to assets of the
16 tort-feasor specifically mentioned in the contract or the insurer or insurers not
17 excluded in such contract. Such contract, when properly acknowledged by the
18 parties thereto, may be recorded in the office of the recorder of deeds in any
19 county where a judgment may be rendered, or in the county of the residence of
20 the tort-feasor, or in both such counties, and if the same is so recorded then such
21 tort-feasor's property, except as to the assets specifically listed in the contract,
22 shall not be subject to any judgment lien as the result of any judgment rendered
23 against the tort-feasor, arising out of the transaction for which the contract is
24 entered into.

25 2. [Before a judgment may be entered against any tort-feasor after such
26 tort-feasor has entered into a contract under this section, the insurer or insurers
27 shall be provided with written notice of the execution of the contract and shall
28 have thirty days after receipt of such notice to intervene as a matter of right in
29 any pending lawsuit involving the claim for damages.] **If any action seeking
30 a judgment on the claim against the tort-feasor is pending at the time
31 of the execution of any contract entered into under this section, then,
32 within thirty days after such execution, the tort-feasor shall provide his
33 or her insurer or insurers with a copy of the executed contract and a
34 copy of any such action. If any action seeking a judgment on the claim
35 against the tort-feasor is pending at the time of the execution of any**

36 contract entered into under this section but is thereafter dismissed,
37 then, within thirty days after the refileing of that action or the filing of
38 any subsequent action arising out of the claim for damages against the
39 tort-feasor, the tort-feasor shall provide his or her insurer or insurers
40 with a copy of the executed contract and a copy of the refiled or
41 subsequently filed action seeking a judgment on the claim against the
42 tort-feasor. If no action seeking a judgment on the claim against the
43 tort-feasor is pending at the time of the execution of any contract
44 entered into under this section, then, within thirty days after the tort-
45 feasor receives notice of any subsequent action, by service of process
46 or otherwise, the tort-feasor shall provide his or her insurer or insurers
47 with a copy of the executed contract and a copy of any action seeking
48 a judgment on the claim against the tort-feasor.

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

53 4. Any insurer or insurers who receive notice under this section
54 shall have the unconditional right to intervene in any pending civil
55 action involving the claim for damages within thirty days after receipt
56 of such notice. Upon intervention under this section, the intervenor
57 shall have all rights afforded to defendants under the Missouri rules of
58 civil procedure including, but not limited to, the right to conduct
59 discovery, the right to engage in motion practice, and the right to a
60 trial by jury. The intervenor shall also have the right to assert any
61 rights or raise any defenses available to the tort-feasor and to assert
62 any rights or raise any defenses that would have been available to the
63 tort-feasor in the absence of the contract entered into under this
64 section or other agreement between the parties to that
65 contract. However, nothing in this section shall alter or reduce the
66 intervening insurer's obligations to any insureds other than the
67 tort-feasor, including any coinsureds of the defendant tort-feasor.

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

71 6. All terms of any covenant not to execute or of any contract to
72 limit recovery to specified assets, regardless of whether it is referred

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

80 [4.] 7. Nothing in this section shall be construed to prohibit an insured
81 from bringing a separate action asserting that the insurer acted in bad faith. In
82 any such action for bad faith, any agreement between the tort-feasor
83 and insured, including any contract under this section, shall be
84 admissible in evidence. The exercise of any rights under this section
85 shall not constitute, nor be construed to be bad faith.

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

Section B. Because of the COVID-19 pandemic, the repeal and
2 reenactment of section 537.037 of this act is deemed necessary for the immediate
3 preservation of the public health, welfare, peace and safety, and is hereby
4 declared to be an emergency act within the meaning of the constitution, and the
5 repeal and reenactment of section 537.037 of this act shall be in full force and
6 effect upon its passage and approval.

✓