

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NOS. 339 & 714

99TH GENERAL ASSEMBLY

0981H.02P

D. ADAM CRUMBLISS, Chief Clerk

---

## AN ACT

To repeal section 537.065, RSMo, and to enact in lieu thereof two new sections relating to settlement of tort claims.

---

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

Section A. Section 537.065, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 537.058 and 537.065, to read as follows:

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

(1) "Extra-contractual damages", any amount of damage that exceeds the total available limit of liability insurance for all of a liability insurer's liability insurance policies applicable to a claim for personal injury, bodily injury, or wrongful death;

(2) "Time-limited demand", any offer to settle any claim for personal injury, bodily injury, or wrongful death made by or on behalf of a claimant to a tortfeasor with a liability insurance policy for purposes of settling a claim against such person within the insurer's limit of liability insurance, which by its terms shall be accepted within a specified period of time;

(3) "Tortfeasor", any person claimed to have caused or contributed to cause personal injury, bodily injury, or wrongful death to a claimant.

2. A time-limited demand to settle any claim for personal injury, bodily injury, or wrongful death shall be in writing, shall reference this section, shall be sent certified mail, return receipt requested, to the tortfeasor's liability insurer, and shall contain the following material terms:

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.

16           **(1) The time period within which the offer shall remain open for acceptance by the**  
17 **tortfeasor's liability insurer, which shall not be less than ninety days from the date such**  
18 **demand is received by the liability insurer;**

19           **(2) The amount of monetary payment requested;**

20           **(3) The date and location of the loss;**

21           **(4) The claim number, if known;**

22           **(5) A description of all the injuries sustained by the claimant;**

23           **(6) The party or parties to be released if such time-limited demand is accepted;**

24           **(7) A description of the claims to be released if such time-limited demand is**  
25 **accepted; and**

26           **(8) An unconditional release for the liability insurer's insured from all present and**  
27 **future liability under section 537.060.**

28           **3. Such time-limited demand shall be accompanied by:**

29           **(1) A list of the names and addresses of health care providers who provided**  
30 **treatment to or evaluation of the claimant or decedent for injuries suffered from the date**  
31 **of injury until the date of the time-limited demand, and HIPAA compliant written**  
32 **authorizations sufficient to allow the liability insurer to obtain records from the health care**  
33 **providers listed; and**

34           **(2) A list of the names and addresses of all the claimant's employers at the time the**  
35 **claimant was first injured until the date of the time-limited demand, and written**  
36 **authorizations sufficient to allow the liability insurer to obtain records from all employers**  
37 **listed, if the claimant asserts a loss of wages, earnings, compensation, or profits however**  
38 **denominated.**

39           **4. If a liability insurer with the right to settle on behalf of an insured receives a**  
40 **time-limited demand, such insurer may accept the time-limited demand by providing**  
41 **written acceptance of the material terms outlined in subsection 2 of this section, delivered**  
42 **or postmarked to the claimant or the claimant's representative within the time period set**  
43 **in the time-limited demand.**

44           **5. Nothing in this section shall prohibit a claimant making a time-limited demand**  
45 **from requiring payment within a specified period; provided, however, that such period for**  
46 **payment shall not be less than ten days after the insurer's receipt of a fully executed**  
47 **unconditional release under section 537.060, as specified in subsection 2 of this section.**

48           **6. Nothing in this section applies to offers or demands or time-limited demands**  
49 **issued within ninety days of the trial by jury of any claim on which a lawsuit has been filed.**

50           **7. In any lawsuit filed by a claimant as an assignee of the tortfeasor or by the**  
51 **tortfeasor for the benefit of the claimant, a time-limited demand that does not strictly**

52 **comply with the terms of this section shall not be considered as a reasonable opportunity**  
53 **to settle for the insurer and shall not be admissible in any lawsuit alleging extra-**  
54 **contractual damages against the tortfeasor's liability insurer."**

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

20 **2. Before a judgment may be entered against any tort-feasor after such tort-feasor**  
21 **has entered into a contract under this section, the insurer or insurers shall be provided**  
22 **with written notice of the execution of the contract and shall have thirty days after receipt**  
23 **of such notice to intervene as a matter of right in any pending lawsuit involving the claim**  
24 **for damages.**

25 **3. The provisions of this section shall apply to any covenant not to execute, any**  
26 **contract to limit recovery to specified assets, or other similar contract, regardless of**  
27 **whether it is referred to as a contract under this section.**

✓