

FIRST REGULAR SESSION

# SENATE BILL NO. 179

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

0429S.01I

ADRIANE D. CROUSE, Secretary

## 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  
2 repealed and two new sections enacted in lieu thereof, to be  
3 known as sections 435.415 and 537.065, to read as follows:

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

8 **2. Any arbitration award or any judgment or decree**  
9 **entered on an arbitration award shall not be binding on any**  
10 **liability insurer, shall not be admissible in evidence in**  
11 **any lawsuit against any liability insurer for any party to**  
12 **an arbitration award, and shall not provide the basis for**  
13 **any judgment or decree, including any garnishment, against**  
14 **any liability insurer, unless the liability insurer has**  
15 **agreed in writing to the arbitration proceeding. Any**  
16 **arbitration award or any judgment or decree confirming,**  
17 **modifying, or correcting any arbitration award shall not be**  
18 **subject to garnishment, enforcement, or collection from any**

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

19 liability insurer unless the liability insurer has agreed in  
20 writing to the written arbitration agreement. Unless  
21 otherwise required by the insurance contract, a liability  
22 insurer's election not to participate in an arbitration  
23 proceeding shall not constitute, nor be construed to be, bad  
24 faith. This section shall not apply to any arbitration  
25 required by statute or arising out of an arbitration  
26 agreement preceding the date of the injury or loss which is  
27 the subject of the arbitration.

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

537.065. 1. Any person having an unliquidated claim  
2 for damages against a tort-feasor, on account of personal  
3 injuries, bodily injuries, or death[, provided that, such  
4 tort-feasor's insurer or indemnitor has the opportunity to  
5 defend the tort-feasor without reservation but refuses to do  
6 so,] may enter into a contract with such tort-feasor or any  
7 insurer on his or her behalf or both **if the insurer has**  
8 **refused to withdraw a reservation of rights or declined**  
9 **coverage for such unliquidated claim,** whereby, in  
10 consideration of the payment of a specified amount, the  
11 person asserting the claim agrees that in the event of a  
12 judgment against the tort-feasor, neither such person nor  
13 any other person, firm, or corporation claiming by or  
14 through him or her will levy execution, by garnishment or as

15 otherwise provided by law, except against the specific  
16 assets listed in the contract and except against any insurer  
17 which insures the legal liability of the tort-feasor for  
18 such damage and which insurer is not excepted from  
19 execution, garnishment or other legal procedure by such  
20 contract. Execution or garnishment proceedings in aid  
21 thereof shall lie only as to assets of the tort-feasor  
22 specifically mentioned in the contract or the insurer or  
23 insurers not excluded in such contract. Such contract, when  
24 properly acknowledged by the parties thereto, may be  
25 recorded in the office of the recorder of deeds in any  
26 county where a judgment may be rendered, or in the county of  
27 the residence of the tort-feasor, or in both such counties,  
28 and if the same is so recorded then such tort-feasor's  
29 property, except as to the assets specifically listed in the  
30 contract, shall not be subject to any judgment lien as the  
31 result of any judgment rendered against the tort-feasor,  
32 arising out of the transaction for which the contract is  
33 entered into.

34 2. [Before a judgment may be entered against any tort-  
35 feasor after such tort-feasor has entered into a contract  
36 under this section, the insurer or insurers shall be  
37 provided with written notice of the execution of the  
38 contract and shall have thirty days after receipt of such  
39 notice to intervene as a matter of right in any pending  
40 lawsuit involving the claim for damages] **If any action**  
41 **seeking a judgment on the claim against the tort-feasor is**  
42 **pending at the time of the execution of any contract entered**  
43 **into under this section, then, within thirty days after such**  
44 **execution, the tort-feasor shall provide his or her insurer**  
45 **or insurers with a copy of the executed contract and a copy**  
46 **of any such action. If any action seeking a judgment on the**

47 claim against the tort-feasor is pending at the time of the  
48 execution of any contract entered into under this section  
49 but is thereafter dismissed, then, within thirty days after  
50 the refiling of that action or the filing of any subsequent  
51 action arising out of the claim for damages against the tort-  
52 feasor, the tort-feasor shall provide his or her insurer or  
53 insurers with a copy of the executed contract and a copy of  
54 the refiled or subsequently filed action seeking a judgment  
55 on the claim against the tort-feasor. If no action seeking  
56 a judgment on the claim against the tort-feasor is pending  
57 at the time of the execution of any contract entered into  
58 under this section, then, within thirty days after the tort-  
59 feasor receives notice of any subsequent action, by service  
60 of process or otherwise, the tort-feasor shall provide his  
61 or her insurer or insurers with a copy of the executed  
62 contract and a copy of any action seeking a judgment on the  
63 claim against the tort-feasor.

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

69 4. Any insurer or insurers who receive notice pursuant  
70 to this section shall have the unconditional right to  
71 intervene in any pending civil action involving the claim  
72 for damages within thirty days after receipt of such  
73 notice. Upon intervention pursuant to this section, the  
74 intervenor shall have all rights afforded to defendants  
75 under the Missouri rules of civil procedure including, but  
76 not limited to, the right to conduct discovery, the right to  
77 engage in motion practice, and the right to a trial by  
78 jury. The intervenor shall also have the right to assert

79 any rights or raise any defenses available to the tort-  
80 feator and to assert any rights or raise any defenses that  
81 would have been available to the tort-feator in the absence  
82 of the contract entered into under this section or other  
83 agreement between the parties to that contract. However,  
84 nothing in this section shall alter or reduce the  
85 intervening insurer's obligations to any insureds other than  
86 the tort-feator, including any co-insureds of the defendant  
87 tort-feator.

88 [3.] 5. The provisions of this section shall apply to  
89 any covenant not to execute or any contract to limit  
90 recovery to specified assets, regardless of whether it is  
91 referred to as a contract under this section.

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

103 [4.] 7. Nothing in this section shall be construed to  
104 prohibit an insured from bringing a separate action  
105 asserting that the insurer acted in bad faith. In any such  
106 action for bad faith, any agreement between the tort-feator  
107 and the insured, including any contract under this section,  
108 shall be admissible in evidence. The exercise of any rights  
109 under this section shall not constitute, nor be construed to  
110 be, bad faith.

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

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