

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NOS. 339 & 714

99TH GENERAL ASSEMBLY

Reported from the Committee on General Laws, April 6, 2017, with recommendation that the Senate Committee Substitute do pass.

0981S.04C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal section 537.065, RSMo, and to enact in lieu thereof three new sections relating to tort claims for damages.

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

Section A. Section 537.065, RSMo, is repealed and three new sections
2 enacted in lieu thereof, to be known as sections 340.285, 537.058, and 537.065,
3 to read as follows:

**340.285. All actions against veterinarians treating animals and
2 any other entity providing veterinary services for animals, and all
3 employees of any of the foregoing acting in the course and scope of
4 their employment, for damages for malpractice, negligence, error, or
5 mistake related to the veterinary care of animals shall be brought
6 within two years from the date of occurrence of the act of neglect
7 complained of, except that:**

8 **(1) In cases in which the act of neglect complained of is
9 introducing and negligently permitting any foreign object to remain
10 within the body of a living animal, the action shall be brought within
11 two years from the date of the discovery of such alleged negligence or
12 from the date on which the owner of an animal in the exercise of
13 ordinary care should have discovered such alleged negligence,
14 whichever date occurs first; and**

15 **(2) In cases in which the act of neglect complained of is the
16 negligent failure to inform, the action shall be brought within two**

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

17 years from the date of the discovery of such alleged negligent failure
18 to inform or from the date on which the owner of the animal in the
19 exercise of ordinary care should have discovered such alleged negligent
20 failure to inform, whichever date first occurs; except that, no such
21 action shall be brought for any negligent failure to inform about the
22 results of medical tests performed more than two years before August
23 28, 2017. For purposes of this subdivision, the act of neglect based on
24 the negligent failure to inform the owner of the animal of the results of
25 medical tests shall not include the act of informing the owner of the
26 animal of erroneous test results.

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

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

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

13 (3) "Tort-feasor", any person claimed to have caused or
14 contributed to cause personal injury, bodily injury, or wrongful death
15 to a claimant.

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

21 (1) The time period within which the offer shall remain open for
22 acceptance by the tort-feasor's liability insurer, which shall not be less
23 than ninety days from the date such demand is received by the liability
24 insurer;

25 (2) The amount of monetary payment requested;

26 (3) The date and location of the loss;

27 (4) The claim number, if known;

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

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

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

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

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

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

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

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

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

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

63 **7. In any lawsuit filed by a claimant as an assignee of the tort-**
64 **feasor or by the tort-feasor for the benefit of the claimant, a time-**

65 **limited demand that does not strictly comply with the terms of this**
66 **section shall not be considered as a reasonable opportunity to settle for**
67 **the insurer and shall not be admissible in any lawsuit alleging extra-**
68 **contractual damages against the tort-feasor's liability insurer.**

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

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

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

33 **under this section.**

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