

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

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HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NOS. 339 & 714

AN ACT

To repeal section 537.065, RSMo, and to enact in lieu thereof two new sections relating to the 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Section A. Section 537.065, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 537.058 and 537.065, to read as follows: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 tort-feasor with a liability insurance policy for purposes of settling a claim against such tort-feasor within the insurer's limit of liability insurance,

1 which by its terms must be accepted within a specified period of  
2 time;

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

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

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

15 (2) The amount of monetary payment requested or a request  
16 for the applicable policy limits;

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

18 (4) The claim number, if known;

19 (5) A description of all known injuries sustained by the  
20 claimant;

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

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

25 (8) An offer of unconditional release for the liability  
26 insurer's insureds from all present and future liability for that  
27 occurrence under section 537.060.

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

1       (1) A list of the names and addresses of health care  
2 providers who provided treatment to or evaluation of the claimant  
3 or decedent for injuries suffered from the date of injury until  
4 the date of the time-limited demand, and HIPPA compliant written  
5 authorizations sufficient to allow the liability insurer to  
6 obtain records from the health care providers listed; and

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

13       4. If a liability insurer with the right to settle on  
14 behalf of an insured receives a time-limited demand, such insurer  
15 may accept the time-limited demand by providing written  
16 acceptance of the material terms outlined in subsection 2 of this  
17 section, delivered or postmarked to the claimant or the  
18 claimant's representative within the time period set in the time-  
19 limited demand.

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

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

1           7. In any lawsuit filed by a claimant as an assignee of the  
2 tort-feasor or by the tort-feasor for the benefit of the  
3 claimant, a time-limited demand that does not comply with the  
4 terms of this section shall not be considered as a reasonable  
5 opportunity to settle for the insurer and shall not be admissible  
6 in any lawsuit alleging extra-contractual damages against the  
7 tort-feasor's liability insurer.

8           537.065. 1. Any person having an unliquidated claim for  
9 damages against a tort-feasor, on account of personal injuries,  
10 bodily injuries, or death, provided that, such tort-feasor's  
11 insurer or indemnitor has the opportunity to defend the tort-  
12 feasor without reservation but refuses to do so, may enter into a  
13 contract with such tort-feasor or any insurer [in] on his or her  
14 behalf or both, whereby, in consideration of the payment of a  
15 specified amount, the person asserting the claim agrees that in  
16 the event of a judgment against the tort-feasor, neither [he]  
17 such person nor any other person, firm, or corporation claiming  
18 by or through him or her will levy execution, by garnishment or  
19 as otherwise provided by law, except against the specific assets  
20 listed in the contract and except against any insurer which  
21 insures the legal liability of the tort-feasor for such damage  
22 and which insurer is not excepted from execution, garnishment or  
23 other legal procedure by such contract. Execution or garnishment  
24 proceedings in aid thereof shall lie only as to assets of the  
25 tort-feasor specifically mentioned in the contract or the insurer  
26 or insurers not excluded in such contract. Such contract, when  
27 properly acknowledged by the parties thereto, may be recorded in  
28 the office of the recorder of deeds in any county where a

1 judgment may be rendered, or in the county of the residence of  
2 the tort-feasor, or in both such counties, and if the same is so  
3 recorded then such tort-feasor's property, except as to the  
4 assets specifically listed in the contract, shall not be subject  
5 to any judgment lien as the result of any judgment rendered  
6 against the tort-feasor, arising out of the transaction for which  
7 the contract is entered into.

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

14 3. The provisions of this section shall apply to any  
15 covenant not to execute, any contract to limit recovery to  
16 specified assets, or other similar contract, regardless of  
17 whether it is referred to as a contract under this section.