

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NOS. 339 & 714
99TH GENERAL ASSEMBLY

0981S.05T

2017

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Section A. Section 537.065, RSMo, is repealed and two new sections enacted in lieu
2 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:

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

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

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

12 2. A time-limited demand to settle any claim for personal injury, bodily injury, or
13 wrongful death shall be in writing, shall reference this section, shall be sent certified mail

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.

14 return-receipt requested to the tort-feasor's liability insurer, and shall contain the
15 following material terms:

16 (1) The time period within which the offer shall remain open for acceptance by the
17 tort-feasor'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 or a request for the applicable
20 policy limits;

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

22 (4) The claim number, if known;

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

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

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

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

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

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

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

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

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

49 6. Nothing in this section applies to offers or demands or time-limited demands

50 **issued within ninety days of the trial by jury of any claim on which a lawsuit has been filed.**

51 **7. In any lawsuit filed by a claimant as an assignee of the tort-feasor or by the tort-**
52 **feasor for the benefit of the claimant, a time-limited demand that does not comply with the**
53 **terms of this section shall not be considered as a reasonable opportunity to settle for the**
54 **insurer and shall not be admissible in any lawsuit alleging extra-contractual damages**
55 **against the tort-feasor'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 ~~[it]~~ **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 or any**
26 **contract to limit recovery to specified assets, regardless of whether it is referred to as a**
27 **contract under this section.**

28 **4. Nothing in this section shall be construed to prohibit an insured from bringing**
29 **a separate action asserting that the insurer acted in bad faith.**

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