

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for House Bill No. 922, Page 1, Section A, Line 2, by  
2 inserting after said section and line the following:

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

8 2. Any arbitration award or any judgment or decree entered on an arbitration award shall not  
9 be binding on any liability insurer, shall not be admissible in evidence in any lawsuit against any  
10 liability insurer for any party to an arbitration award, and shall not provide the basis for any  
11 judgment or decree, including any garnishment, against any liability insurer, unless the liability  
12 insurer has agreed in writing to the arbitration proceeding. Any arbitration award or any judgment  
13 or decree confirming, modifying, or correcting any arbitration award shall not be subject to  
14 garnishment, enforcement, or collection from any liability insurer unless the liability insurer has  
15 agreed in writing to the written arbitration agreement. Unless otherwise required by its insurance  
16 contract, a liability insurer's election not to participate in an arbitration proceeding shall not  
17 constitute, nor be construed to be, bad faith. This section shall not apply to any arbitration required  
18 by statute or arising out of an arbitration agreement preceding the date of the injury or loss that is  
19 the subject of the arbitration.

20 3. As used in this section, the term "insurer" shall include any entity authorized to transact  
21 liability insurance business in this state including, but not limited to, any liability insurance  
22 company organized, incorporated, or doing business under the provisions of chapter 379, any entity  
23 formed under section 537.620, any entity that is subject to sections 537.700 to 537.756, or any entity  
24 that provides risk management services to any public or private entity."; and  
25

26 Further amend said bill, Page 2, Section 516.140, Line 13, by inserting after said section and line the  
27 following:

28  
29 "537.065. 1. Any person having an unliquidated claim for damages against a tort-feasor<sup>[,]</sup>  
30 on account of personal injuries, bodily injuries, or death<sup>[, provided that, such tort-feasor's insurer or</sup>  
31 <sup>indemnitor has the opportunity to defend the tort-feasor without reservation but refuses to do so,]</sup>  
32 may enter into a contract with such tort-feasor or any insurer on his or her behalf or both if the  
33 insurer has refused to withdraw a reservation of rights or declined coverage for such unliquidated  
34 claim, whereby, in consideration of the payment of a specified amount, the person asserting the  
35 claim agrees that in the event of a judgment against the tort-feasor, neither such person nor any other  
36 person, firm, or corporation claiming by or through him or her will levy execution, by garnishment

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1 or as otherwise provided by law, except against the specific assets listed in the contract and except  
2 against any insurer which insures the legal liability of the tort-feasor for such damage and which  
3 insurer is not excepted from execution, garnishment or other legal procedure by such contract.  
4 Execution or garnishment proceedings in aid thereof shall lie only as to assets of the tort-feasor  
5 specifically mentioned in the contract or the insurer or insurers not excluded in such contract. Such  
6 contract, when properly acknowledged by the parties thereto, may be recorded in the office of the  
7 recorder of deeds in any county where a judgment may be rendered, or in the county of the  
8 residence of the tort-feasor, or in both such counties, and if the same is so recorded then such tort-  
9 feasor's property, except as to the assets specifically listed in the contract, shall not be subject to any  
10 judgment lien as the result of any judgment rendered against the tort-feasor, arising out of the  
11 transaction for which the contract is entered into.

12 2. ~~Before a judgment may be entered against any tort-feasor after such tort-feasor has~~  
13 ~~entered into a contract under this section, the insurer or insurers shall be provided with written~~  
14 ~~notice of the execution of the contract and shall have thirty days after receipt of such notice to~~  
15 ~~intervene as a matter of right in any pending lawsuit involving the claim for damages.] If any action  
16 seeking a judgment on the claim against the tort-feasor is pending at the time of the execution of any  
17 contract entered into under this section, then, within thirty days after such execution, the tort-feasor  
18 shall provide his or her insurer or insurers with a copy of the executed contract and a copy of any  
19 such action. If any action seeking a judgment on the claim against the tort-feasor is pending at the  
20 time of the execution of any contract entered into under this section but is thereafter dismissed, then,  
21 within thirty days after the refiling of that action or the filing of any subsequent action arising out of  
22 the claim for damages against the tort-feasor, the tort-feasor shall provide his or her insurer or  
23 insurers with a copy of the executed contract and a copy of the refiled or subsequently filed action  
24 seeking a judgment on the claim against the tort-feasor. If no action seeking a judgment on the  
25 claim against the tort-feasor is pending at the time of the execution of any contract entered into  
26 under this section, then, within thirty days after the tort-feasor receives notice of any subsequent  
27 action, by service of process or otherwise, the tort-feasor shall provide his or her insurer or insurers  
28 with a copy of the executed contract and a copy of any action seeking a judgment on the claim  
29 against the tort-feasor.~~

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

33 4. Any insurer or insurers who receive notice under this section shall have the unconditional  
34 right to intervene in any pending civil action involving the claim for damages within thirty days  
35 after receipt of such notice. Upon intervention under this section, the intervenor shall have all rights  
36 afforded to defendants under the Missouri rules of civil procedure including, but not limited to, the  
37 right to conduct discovery, the right to engage in motion practice, and the right to a trial by jury.  
38 The intervenor shall also have the right to assert any rights or raise any defenses available to the  
39 tort-feasor and to assert any rights or raise any defenses that would have been available to the tort-  
40 feasor in the absence of the contract entered into under this section or other agreement between the  
41 parties to that contract. However, nothing in this section shall alter or reduce the intervening  
42 insurer's obligations to any insureds other than the tort-feasor, including any coinsureds of the  
43 defendant tort-feasor.

44 5. The provisions of this section shall apply to any covenant not to execute or any contract  
45 to limit recovery to specified assets, regardless of whether it is referred to as a contract under this  
46 section.

47 6. All terms of any covenant not to execute or of any contract to limit recovery to specified  
48 assets, regardless of whether it is referred to as a contract under this section, shall be in writing and  
49 signed by the parties to the covenant or contract. No unwritten term of any covenant not to execute

1 or of any contract to limit recovery to specified assets, regardless of whether it is referred to as a  
2 contract under this section, shall be enforceable against any party to the covenant or contract, the  
3 liability insurer of any party to the covenant or contract, or any other person or entity.

4 [4.] 7. Nothing in this section shall be construed to prohibit an insured from bringing a  
5 separate action asserting that the insurer acted in bad faith. In any such action for bad faith, any  
6 agreement between the tort-feasor and insured, including any contract under this section, shall be  
7 admissible in evidence. The exercise of any rights under this section shall not constitute, nor be  
8 construed to be, bad faith.

9 8. As used in this section, the term "insurer" shall include any entity authorized to transact  
10 liability insurance business in this state including, but not limited to, any liability insurance  
11 company organized, incorporated, or doing business under the provisions of chapter 379, any entity  
12 formed under section 537.620, any entity that is subject to sections 537.700 to 537.756, or any entity  
13 that provides risk management services to any public or private entity."; and

14  
15 Further amend said bill by amending the title, enacting clause, and intersectional references  
16 accordingly.