SECOND REGULAR SESSION

HOUSE BILL NO. 1344

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GOSEN (Sponsor), WIELAND AND ENGLISH (Co-sponsors).

5124H.01I D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 379.200 and 537.065, RSMo, and to enact in lieu thereof five new sections relating to the regulation of insurance.

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

Section A. Sections 379.200 and 537.065, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 375.417, 375.418, 375.419, 379.200 and 537.065, to read as follows:

375.417. 1. As used in sections 375.417 and 375.418, the following terms mean:

(1) "Duty to defend", the duty arising under a contract of insurance to provide a defense to the insured as required under the insurance contract;

(2) "Duty to indemnify", the duty of an insurer to pay settlements or judgments on account of the actual or potential liability of an insured for damages as required under the insurance contract;

(3) "Insured", a person or entity who is or may be entitled to a defense or indemnification under a contract of insurance;

(4) "Reservation of rights", a statement by or on behalf of an insurer of the reasons which may relieve the insurer of its duty to defend or duty to indemnify.

2. A reservation of rights shall:

(1) Be made in writing and be sent to the insured by mail, or delivered to the insured either in person or by electronic means pursuant to section 379.011;

(2) Be so provided to an insured no later than sixty days after the insurer has both:

(a) Received notice of the claim or suit against the insured, and

(b) Become aware of a basis for asserting its reservation of rights; and

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.

(3) State with reasonable specificity the basis for the reservation of rights.

3. When an insurer has communicated a reservation of rights, the fact that the insurer has:

(1) Communicated the reservation of rights;

(2) Offered to defend subject to a reservation of rights;

(3) Provided a defense subject to a reservation of rights; or

(4) Declined or refused to withdraw a reservation of rights, shall neither constitute, nor be evidence of, breach of any duty owed to the insured, whether in tort, contract, or otherwise. In applying this section, it is the intent of the general assembly to reject and abrogate the holdings contained in *Butters v. City of Independence*, 513 S.W.2d 418 (Mo. 1974), *Whitehead v. Lakeside Hosp. Ass'n*, 844 S.W.2d 475 (Mo. App. 1992), *State ex rel. Mid-Century Ins. Co. v. McKelvey*, 666 S.W.2d 457 (Mo. App. 1984), and *Truck Ins. Exch. v. Prairie Framing, LLC*, 162 S.W.3d 64 (Mo. App. W.D. 2005), and other decisions suggesting or otherwise holding that an insurer may be found to have breached the duty to defend under the circumstances listed in this subsection.

4. Where an insurer offers or provides a defense subject to a reservation of rights, the insured remains bound by any and all provisions in the insurance contract including but not limited to any duty to cooperate.

5. Nothing in this section shall be construed to create any obligation to defend or indemnify which is not expressly set forth in the insurance contract.

6. Nothing in this section shall change the obligations an insurer may have with regard to the payment of minimum limits under the Missouri motor vehicle financial responsibility law prescribed in section 303.190.

7. This section does not apply to a contract of excess or umbrella insurance which does not contain a duty to defend as provided by the insurance contract.

8. Notwithstanding the provisions set forth in this section, any reservation of rights sent within sixty days of the effective date of this section shall meet the requirements of subdivision (2) of subsection 2 of this section.

375.418. If an insurer breaches its duty to defend, in the absence of a final adjudication of bad faith, the insurer shall be liable for any judgment against the insured or any settlement paid by the insured, but only up to the applicable limits of liability of the insurance contract. The insurer shall be liable for reasonable attorney fees and statutory court costs incurred by the insured in conducting the defense of the suit. In applying this section, it is the intent of the general assembly to reject and abrogate any previous case law which suggests or otherwise holds that a breach of the duty to defend, without a final adjudication of bad faith, allows for an award of damages in excess of the applicable limits

of liability stated in the insurance contract, including but not limited to, the holding contained in *Columbia Cas. Co. v. HIAR Holding, LLC*, No. SC93026, – S.W.3d –, 2013 WL 4080770 (Mo. Aug. 13, 2013). This section shall apply to all causes of actions, suits, and claims unless the liability of the insurer has been determined by final judgment against the insurer before the effective date of this section.

375.419. When an insurer offers or provides a defense to a lawsuit filed against its insured, the insurer shall have the unconditional right to intervene in any such lawsuit. It is the intent of the general assembly to reject and abrogate any holding or suggestion contained in *State ex rel. Mid-Century Ins. Co. v. McKelvey*, 666 S.W.2d 457 (Mo. App. 1984), *State ex rel. Rimco, Inc. v. Dowd*, 858 S.W.2d 307 (Mo. App. 1993), and all other decisions which hold or suggest otherwise. Nothing in this section shall be construed to require an insurer to intervene in any such lawsuit.

379.200. **1.** Upon the recovery of a final judgment against any person, firm or corporation by any person, including administrators or executors, for loss or damage on account of bodily injury or death, or damage to property if the defendant in such action was insured against said loss or damage at the time when the right of action arose, the judgment creditor shall be entitled to have the insurance money, provided for in the contract of insurance between the insurance company, person, firm or association as described in section 379.195, and the defendant, applied to the satisfaction of the judgment, and if the judgment is not satisfied within thirty days after the date when it is rendered, the judgment creditor may proceed in equity against the defendant and the insurance company to reach and apply the insurance money to the satisfaction of the judgment. This section shall not apply to any insurance company in liquidation.

2. No party shall add or join any other or different cause of action to a claim brought pursuant to this section, whether in the petition or by way of any counterclaim, cross-claim, or third-party claim.

3. In any proceeding brought to garnish on an insurance contract under this section or any other rule or provision of law:

(1) The judgment creditor shall have the burden of showing that the judgment was the result of a contested adversarial proceeding. If the judgment on which the garnishment was initiated was entered without trial by jury, the judge who entered that judgment shall not make the determination called for by this subdivision. As used in this section, a "contested adversarial proceeding" means a proceeding in which all parties have the opportunity to conduct discovery, present evidence, and cross-examine witnesses and the judgment debtor's insurer defended, or expressly declined to defend, its insured;

(2) If it is determined that coverage is provided for the loss, but the evidence does not show that the judgment resulted from a contested adversarial proceeding, the insurer shall have the right to trial by jury on the issue of the damages to be assessed against the judgment debtor as in the case of default judgments.

537.065. **1.** Any person having an unliquidated claim for damages against a tort-feasor, on account of bodily injuries or death, may enter into a contract with such tort-feasor or any insurer in his behalf or both, whereby, in consideration of the payment of a specified amount, the person asserting the claim agrees that in the event of a judgment against the tort-feasor, neither he nor any person, firm or corporation claiming by or through him will levy execution, by garnishment or as otherwise provided by law, except against the specific assets listed in the contract and except against any insurer which insures the legal liability of the tort-feasor for such damage and which insurer is not excepted from execution, garnishment or other legal procedure by such contract. Execution or garnishment proceedings in aid thereof shall lie only as to assets of the tort-feasor specifically mentioned in the contract or the insurer or insurers not excluded in such contract. Such contract, when properly acknowledged by the parties thereto, may be recorded in the office of the recorder of deeds in any county where a judgment may be rendered, or in the county of the residence of the tort-feasor, or in both such counties, and if the same is so recorded then such tort-feasor's property, except as to the assets specifically listed in the contract, shall not be subject to any judgment lien as the result of any judgment rendered against the tort-feasor, arising out of the transaction for which the contract is entered into.

2. No agreement under this section shall condition the protection of the assets of the alleged tort-feasor on the performance of any future act.

3. No insurer shall be required to enter into an agreement under this section. The fact that an insurer has not entered into an agreement under this section shall not be evidence of the commission of a tort or breach of contract.

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