

SECOND REGULAR SESSION

# HOUSE BILL NO. 1354

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BYRD.

Read 1<sup>st</sup> time February 2, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4036L.011

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### AN ACT

To repeal section 105.711, RSMo, and to enact in lieu thereof one new section relating to the state legal expense fund.

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

Section A. Section 105.711, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 105.711, to read as follows:

105.711. 1. There is hereby created a "State Legal Expense Fund" which shall consist of moneys appropriated to the fund by the general assembly and moneys otherwise credited to such fund pursuant to section 105.716.

2. Moneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against:

(1) The state of Missouri, or any agency of the state, pursuant to section 536.050 or 536.087, RSMo, or section 537.600, RSMo;

(2) Any officer or employee of the state of Missouri or any agency of the state, including, without limitation, elected officials, appointees, members of state boards or commissions and members of the Missouri national guard upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state, or any agency of the state, provided that moneys in this fund shall not be available for payment of claims made under chapter 287, RSMo; or

(3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse or other health care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335,

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.**

17 336, 337 or 338, RSMo, who is employed by the state of Missouri or any agency of the state,  
18 under formal contract to conduct disability reviews on behalf of the department of elementary  
19 and secondary education or provide services to patients or inmates of state correctional facilities  
20 **or county jails** on a part-time basis;

21 (b) Any physician licensed to practice medicine in Missouri under the provisions of  
22 chapter 334, RSMo, and his professional corporation organized pursuant to chapter 356, RSMo,  
23 who is employed by or under contract with a city or county health department organized under  
24 chapter 192, RSMo, or chapter 205, RSMo, or a city health department operating under a city  
25 charter, or a combined city-county health department to provide services to patients for medical  
26 care caused by pregnancy, delivery and child care, if such medical services are provided by the  
27 physician pursuant to the contract without compensation or the physician is paid from no other  
28 source than a governmental agency except for patient co-payments required by federal or state  
29 law or local ordinance;

30 (c) Any physician licensed to practice medicine in Missouri under the provisions of  
31 chapter 334, RSMo, who is employed by or under contract with a federally funded community  
32 health center organized under Section 315, 329, 330 or 340 of the Public Health Services Act (42  
33 U.S.C. 216, 254c) to provide services to patients for medical care caused by pregnancy, delivery  
34 and child care, if such medical services are provided by the physician pursuant to the contract  
35 or employment agreement without compensation or the physician is paid from no other source  
36 than a governmental agency or such a federally funded community health center except for  
37 patient co-payments required by federal or state law or local ordinance. In the case of any claim  
38 or judgment that arises under this paragraph, the aggregate of payments from the state legal  
39 expense fund shall be limited to a maximum of one million dollars for all claims arising out of  
40 and judgments based upon the same act or acts alleged in a single cause against any such  
41 physician, and shall not exceed one million dollars for any one claimant;

42 (d) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or  
43 registered pursuant to chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who  
44 provides medical, dental or nursing treatment within the scope of his license or registration at  
45 a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo,  
46 a city health department operating under a city charter, or a combined city-county health  
47 department, or a nonprofit community health center qualified as exempt from federal taxation  
48 under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if such treatment is  
49 restricted to primary care and preventive health services, provided that such treatment shall not  
50 include the performance of an abortion, and if such medical, dental or nursing services are  
51 provided by the physician, dentist, physician assistant, dental hygienist or nurse without  
52 compensation. In the case of any claim or judgment that arises under this paragraph, the

53 aggregate of payments from the state legal expense fund shall be limited to a maximum of five  
54 hundred thousand dollars, for all claims arising out of and judgments based upon the same act  
55 or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one  
56 claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall  
57 be limited to five hundred thousand dollars; or

58 (e) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or  
59 registered to practice medicine, nursing or dentistry or to act as a physician assistant or dental  
60 hygienist in Missouri under the provisions of chapter 332, RSMo, chapter 334, RSMo, or chapter  
61 335, RSMo, who provides medical, nursing or dental treatment within the scope of his license  
62 or registration to students of a school whether a public, private or parochial elementary or  
63 secondary school, if such physician's treatment is restricted to primary care and preventive health  
64 services and if such medical, dental or nursing services are provided by the physician, dentist,  
65 physician assistant, dental hygienist, or nurse without compensation. In the case of any claim  
66 or judgment that arises under this paragraph, the aggregate of payments from the state legal  
67 expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims  
68 arising out of and judgments based upon the same act or acts alleged in a single cause and shall  
69 not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased  
70 pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars;  
71 or

72 (4) Staff employed by the juvenile division of any judicial circuit; or

73 **(5) Any attorney licensed to practice law in the state of Missouri who practices law**  
74 **at or through a nonprofit community social services center qualified as exempt from**  
75 **federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended,**  
76 **or through a legal clinic operated by or through any public or private school of law located**  
77 **in this state or through any agency of any federal, state, or local government, if such legal**  
78 **practice is provided by the attorney without compensation. In the case of any claim or**  
79 **judgment that arises under this subdivision, the aggregate of payments from the state legal**  
80 **expense fund shall be limited to a maximum of five hundred thousand dollars for all claims**  
81 **arising out of and judgments based upon the same act or acts alleged in a single cause and**  
82 **shall not exceed five hundred thousand dollars for any one claimant, and insurance policies**  
83 **purchased pursuant to the provisions of section 105.721 shall be limited to five hundred**  
84 **thousand dollars.**

85 3. The department of health and senior services shall promulgate rules regarding contract  
86 procedures and the documentation of care provided under paragraphs (b), (c), (d), and (e) of  
87 subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal  
88 expense fund or any policy of insurance procured pursuant to the provisions of section 105.721,

provided in subsection [5] 6 of this section, shall not apply to any claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. Any claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured pursuant to section 105.721, to the extent damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance obtained and maintained in force by any physician, dentist, physician assistant, dental hygienist, or nurse for coverage concerning his or her private practice and assets shall not be considered available under subsection [5] 6 of this section to pay that portion of a judgment or claim for which the state legal expense fund is liable under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. However, a physician, nurse, dentist, physician assistant, or dental hygienist may purchase liability or malpractice insurance for coverage of liability claims or judgments based upon care rendered under paragraphs (c), (d), and (e) of subdivision (3) of subsection 2 of this section which exceed the amount of liability coverage provided by the state legal expense fund under those paragraphs. Even if paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is repealed or modified, the state legal expense fund shall be available for damages which occur while the pertinent paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is in effect.

**4. The attorney general shall promulgate rules regarding contract procedures and the documentation of legal practice provided under subdivision (5) of subsection 2 of this section. The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to section 105.721 as provided in subsection 6 of this section shall not apply to any claim or judgment arising under subdivision (5) of subsection 2 of this section. Any claim or judgment arising under subdivision (5) of subsection 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured pursuant to section 105.721 to the extent damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance otherwise obtained and maintained in force shall not be considered available under subsection 6 of this section to pay that portion of a judgment or claim for which the state legal expense fund is liable under subdivision (5) of subsection 2 of this section. However, an attorney may obtain liability or malpractice insurance for coverage of liability claims or judgments based upon legal practice rendered under subdivision (5) of subsection 2 of this section which exceed the amount of liability coverage provided by the state legal expense fund under subdivision (5) of subsection 2 of this section. Even if subdivision (5) of subsection 2 of this section is repealed or amended, the state legal expense fund shall be available for damages which occur while the pertinent subdivision (5) of subsection 2 of this section is in effect.**

125           **5.** All payments shall be made from the state legal expense fund by the commissioner  
126 of administration with the approval of the attorney general. Payment from the state legal expense  
127 fund of a claim or final judgment award against a physician, dentist, physician assistant, dental  
128 hygienist, or nurse described in paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection  
129 2 of this section **or against an attorney in subdivision (5) of subsection 2 of this section** shall  
130 only be made for services rendered in accordance with the conditions of such paragraphs.

131           **[5.] 6.** Except as provided in subsection 3 of this section, in the case of any claim or  
132 judgment that arises under sections 537.600 and 537.610, RSMo, against the state of Missouri,  
133 or an agency of the state, the aggregate of payments from the state legal expense fund and from  
134 any policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed  
135 the limits of liability as provided in sections 537.600 to 537.610, RSMo. No payment shall be  
136 made from the state legal expense fund or any policy of insurance procured with state funds  
137 pursuant to section 105.721 unless and until the benefits provided to pay the claim by any other  
138 policy of liability insurance have been exhausted. **In no event shall the state legal expense**  
139 **fund pay more than five hundred thousand dollars to any one claimant. For purposes of**  
140 **this section, all individuals and entities asserting a claim for a wrongful death pursuant to**  
141 **section 537.080, RSMo, shall be considered to be one claimant. Payment from the state**  
142 **legal expense fund resulting from a claim against an individual precludes execution of a**  
143 **judgment against such individual or the individual's estate for tort actions committed by**  
144 **such individual.**

145           **[6.] 7.** The provisions of section 33.080, RSMo, notwithstanding, any moneys remaining  
146 to the credit of the state legal expense fund at the end of an appropriation period shall not be  
147 transferred to general revenue.

148           **[7.] 8.** Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,  
149 that is promulgated under the authority delegated in sections 105.711 to 105.726 shall become  
150 effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo.  
151 Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or  
152 adopted prior to August 28, 1999, if it fully complied with the provisions of chapter 536, RSMo.  
153 This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the  
154 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to  
155 disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking  
156 authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.