

SECOND REGULAR SESSION

# HOUSE BILL NO. 1389

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES COOPER (155) (Sponsor), SCHAAF, PAGE, PORTWOOD,  
RUPP, FLOOK, BRINGER, DONNELLY AND THRELKELD (Co-sponsors).

Read 1st time January 12, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4039L.01I

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Section A. Section 105.711, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 105.711, to read as follows: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

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.

15 (3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse, or other health  
16 care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335,  
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 on a part-time basis, and any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse, or  
21 other health care provider licensed to practice in Missouri under the provisions of chapter 330,  
22 332, 334, 335, 336, 337, or 338, RSMo, who is under formal contract to provide services to  
23 patients or inmates at a county jail on a part-time basis;

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

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

45 (d) Any physician licensed pursuant to chapter 334, RSMo, who is affiliated with and  
46 receives no compensation from a nonprofit entity qualified as exempt from federal taxation under  
47 Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which offers a free health  
48 screening in any setting or any physician, nurse, physician assistant, dental hygienist, [or] dentist,  
49 **or other health care provider** licensed or registered pursuant to chapter **330, 331, 332, [RSMo,**  
50 **chapter] 334, [RSMo, or chapter] 335, 336, 337, or 338, RSMo, who provides [medical, dental,**

51 or nursing treatment] **health care services** within the scope of his **or her** license or registration  
52 at a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo,  
53 a city health department operating under a city charter, or a combined city-county health  
54 department, or a nonprofit community health center qualified as exempt from federal taxation  
55 under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if such [treatment  
56 is] **services are** restricted to primary care and preventive health services, provided that such  
57 [treatment] **services** shall not include the performance of an abortion, and if such [medical,  
58 dental, or nursing] **health** services are provided by the [physician, dentist, physician assistant,  
59 dental hygienist, or nurse] **health care provider licensed or registered under chapter 330,**  
60 **331, 332, 334, 335, 336, 337, or 338, RSMo,** without compensation. Medicaid or medicare  
61 payments for primary care and preventive health services provided by a [physician, dentist,  
62 physician assistant, dental hygienist, or nurse] **health care provider licensed or registered**  
63 **under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo,** who volunteers at a free  
64 health clinic is not compensation for the purpose of this section if the total payment is assigned  
65 to the free health clinic. For the purposes of the section, "free health clinic" means a nonprofit  
66 community health center qualified as exempt from federal taxation under Section 501 (c)(3) of  
67 the Internal Revenue Code of 1987, as amended, that provides primary care and preventive  
68 health services to people without health insurance coverage for the services provided without  
69 charge. In the case of any claim or judgment that arises under this paragraph, the aggregate of  
70 payments from the state legal expense fund shall be limited to a maximum of five hundred  
71 thousand dollars, for all claims arising out of and judgments based upon the same act or acts  
72 alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant,  
73 and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited  
74 to five hundred thousand dollars. Liability or malpractice insurance obtained and maintained in  
75 force by or on behalf of any [physician, dentist, physician assistant, dental hygienist, or nurse]  
76 **health care provider licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337,**  
77 **or 338, RSMo,** shall not be considered available to pay that portion of a judgment or claim for  
78 which the state legal expense fund is liable under this paragraph; or

79 (e) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or  
80 registered to practice medicine, nursing, or dentistry or to act as a physician assistant or dental  
81 hygienist in Missouri under the provisions of chapter 332, RSMo, chapter 334, RSMo, or chapter  
82 335, RSMo, who provides medical, nursing, or dental treatment within the scope of his license  
83 or registration to students of a school whether a public, private, or parochial elementary or  
84 secondary school, if such physician's treatment is restricted to primary care and preventive health  
85 services and if such medical, dental, or nursing services are provided by the physician, dentist,  
86 physician assistant, dental hygienist, or nurse without compensation. In the case of any claim

87 or judgment that arises under this paragraph, the aggregate of payments from the state legal  
88 expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims  
89 arising out of and judgments based upon the same act or acts alleged in a single cause and shall  
90 not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased  
91 pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars;  
92 or

93 **(f) Any physician licensed under chapter 334, RSMo, or dentist licensed under**  
94 **chapter 332, RSMo, providing specialty care without compensation to an individual**  
95 **referred to his or her care by a city or county health department organized under chapter**  
96 **192 or 205, RSMo, a city health department operating under a city charter, or a combined**  
97 **city-county health department or a nonprofit community health center qualified as exempt**  
98 **from federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986, as**  
99 **amended, or a federally funded community health center organized under Section 315, 329,**  
100 **330, or 340 of the Public Health Services Act (42 U.S.C. Section 216, 254c) provided that**  
101 **such treatment shall not include the performance of an abortion. In the case of any claim**  
102 **or judgment that arises under this paragraph, the aggregate of payments from the state**  
103 **legal expense fund shall be limited to a maximum of one million dollars, for all claims**  
104 **arising out of and judgments based upon the same act or acts alleged in a single cause and**  
105 **shall not exceed one million dollars for any one claimant, and insurance policies purchased**  
106 **under the provisions of section 105.721 shall be limited to one million dollars. Liability or**  
107 **malpractice insurance obtained and maintained in force by or on behalf of any health care**  
108 **provider licensed or registered under chapter 332 or 334, RSMo, shall not be considered**  
109 **available to pay that portion of a judgment or claim for which the state legal expense fund**  
110 **is liable under this paragraph; or**

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

112 (5) Any attorney licensed to practice law in the state of Missouri who practices law at  
113 or through a nonprofit community social services center qualified as exempt from federal  
114 taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or through  
115 any agency of any federal, state, or local government, if such legal practice is provided by the  
116 attorney without compensation. In the case of any claim or judgment that arises under this  
117 subdivision, the aggregate of payments from the state legal expense fund shall be limited to a  
118 maximum of five hundred thousand dollars for all claims arising out of and judgments based  
119 upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand  
120 dollars for any one claimant, and insurance policies purchased pursuant to the provisions of  
121 section 105.721 shall be limited to five hundred thousand dollars.

3. The department of health and senior services shall promulgate rules regarding contract procedures and the documentation of care provided under paragraphs (b), (c), (d), [and] (e), **and (f)** of subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to the provisions of section 105.721, provided in subsection 7 of this section, shall not apply to any claim or judgment arising under paragraph (a), (b), (c), (d), [or] (e), **or (f)** of subdivision (3) of subsection 2 of this section. Any claim or judgment arising under paragraph (a), (b), (c), (d), [or] (e), **or (f)** 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] **health care provider licensed under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo**, for coverage concerning his or her private practice and assets shall not be considered available under subsection 7 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), **or (f)** of subdivision (3) of subsection 2 of this section. However, a [physician, nurse, dentist, physician assistant, or dental hygienist] **health care provider licensed under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo**, may purchase liability or malpractice insurance for coverage of liability claims or judgments based upon care rendered under paragraphs (c), (d), [and] (e), **and (f)** 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), **or (f)** 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), **or (f)** 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 7 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 7 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 that 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 that occur while the pertinent subdivision (5) of subsection 2 of this section is in effect.

5. All payments shall be made from the state legal expense fund by the commissioner of administration with the approval of the attorney general. Payment from the state legal expense fund of a claim or final judgment award against a [physician, dentist, physician assistant, dental hygienist, or nurse] **health care provider licensed under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo**, described in paragraph (a), (b), (c), (d), [or] (e), or (f) of subdivision (3) of subsection 2 of this section, or against an attorney in subdivision (5) of subsection 2 of this section, shall only be made for services rendered in accordance with the conditions of such paragraphs. In the case of any claim or judgment against an officer or employee of the state or any agency of the state based 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 that would give rise to a cause of action under section 537.600, RSMo, the state legal expense fund shall be liable, excluding punitive damages, for:

(1) Economic damages to any one claimant; and

(2) Up to three hundred fifty thousand dollars for noneconomic damages.

The state legal expense fund shall be the exclusive remedy and shall preclude any other civil actions or proceedings for money damages arising out of or relating to the same subject matter against the state officer or employee, or the officer's or employee's estate. No officer or employee of the state or any agency of the state shall be individually liable in his or her personal capacity for 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. The provisions of this subsection shall not apply to any defendant who is not an officer or employee of the state or any agency of the state in any proceeding against an officer or employee of the state or any agency of the state. Nothing in this subsection shall limit the rights and remedies otherwise available to a claimant under state law or common law in proceedings where one or more defendants is not an officer or employee of the state or any agency of the state.

6. The limitation on awards for noneconomic damages provided for in this subsection shall be increased or decreased on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce. The current

194 value of the limitation shall be calculated by the director of the department of insurance, who  
195 shall furnish that value to the secretary of state, who shall publish such value in the Missouri  
196 Register as soon after each January first as practicable, but it shall otherwise be exempt from the  
197 provisions of section 536.021, RSMo.

198         7. Except as provided in subsection 3 of this section, in the case of any claim or  
199 judgment that arises under sections 537.600 and 537.610, RSMo, against the state of Missouri,  
200 or an agency of the state, the aggregate of payments from the state legal expense fund and from  
201 any policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed  
202 the limits of liability as provided in sections 537.600 to 537.610, RSMo. No payment shall be  
203 made from the state legal expense fund or any policy of insurance procured with state funds  
204 pursuant to section 105.721 unless and until the benefits provided to pay the claim by any other  
205 policy of liability insurance have been exhausted.

206         8. The provisions of section 33.080, RSMo, notwithstanding, any moneys remaining to  
207 the credit of the state legal expense fund at the end of an appropriation period shall not be  
208 transferred to general revenue.

209         9. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that  
210 is promulgated under the authority delegated in sections 105.711 to 105.726 shall become  
211 effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo.  
212 Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or  
213 adopted prior to August 28, 1999, if it fully complied with the provisions of chapter 536, RSMo.  
214 This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the  
215 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to  
216 disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking  
217 authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

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