

SECOND REGULAR SESSION

HOUSE BILL NO. 1398

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DUSENBERG (Sponsor) AND SCHAAF (Co-sponsor).

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D. ADAM CRUMBLISS, Chief Clerk

3199L.01I

AN ACT

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

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Section A. Section 105.711, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 105.711, to read as follows: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

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, dentist, or
49 other health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336,
50 337, or 338, RSMo, who provides health care services within the scope of his or her license or

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

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

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

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

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

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

120 (6) Any social welfare board created under section 205.770, RSMo, and the members
121 and officers thereof upon conduct of such officer or employee while acting in his or her capacity
122 as a board member or officer, and any physician, nurse, physician assistant, dental hygienist,

123 dentist, or other health care professional licensed or registered under chapter 330, 331, 332, 334,
124 335, 336, 337, or 338, RSMo, who is referred to provide medical care without compensation by
125 the board and who provides health care services within the scope of his or her license or
126 registration as prescribed by the board.

127 3. The department of health and senior services shall promulgate rules regarding contract
128 procedures and the documentation of care provided under paragraphs (b), (c), (d), (e), and (f) of
129 subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal
130 expense fund or any policy of insurance procured pursuant to the provisions of section 105.721,
131 provided in subsection 7 of this section, shall not apply to any claim or judgment arising under
132 paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section. Any claim
133 or judgment arising under paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection
134 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured
135 pursuant to section 105.721, to the extent damages are allowed under sections 538.205 to
136 538.235, RSMo. Liability or malpractice insurance obtained and maintained in force by any
137 health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337,
138 or 338, RSMo, for coverage concerning his or her private practice and assets shall not be
139 considered available under subsection 7 of this section to pay that portion of a judgment or claim
140 for which the state legal expense fund is liable under paragraph (a), (b), (c), (d), (e), or (f) of
141 subdivision (3) of subsection 2 of this section. However, a health care professional licensed or
142 registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, may purchase liability
143 or malpractice insurance for coverage of liability claims or judgments based upon care rendered
144 under paragraphs (c), (d), (e), and (f) of subdivision (3) of subsection 2 of this section which
145 exceed the amount of liability coverage provided by the state legal expense fund under those
146 paragraphs. Even if paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of
147 this section is repealed or modified, the state legal expense fund shall be available for damages
148 which occur while the pertinent paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of
149 subsection 2 of this section is in effect.

150 4. The attorney general shall promulgate rules regarding contract procedures and the
151 documentation of legal practice provided under subdivision (5) of subsection 2 of this section.
152 The limitation on payments from the state legal expense fund or any policy of insurance procured
153 pursuant to section 105.721 as provided in subsection 7 of this section shall not apply to any
154 claim or judgment arising under subdivision (5) of subsection 2 of this section. Any claim or
155 judgment arising under subdivision (5) of subsection 2 of this section shall be paid by the state
156 legal expense fund or any policy of insurance procured pursuant to section 105.721 to the extent
157 damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice
158 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 health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, described in paragraph (a), (b), (c), (d), (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

195 by the Bureau of Economic Analysis of the United States Department of Commerce. The current
196 value of the limitation shall be calculated by the director of the department of insurance, who
197 shall furnish that value to the secretary of state, who shall publish such value in the Missouri
198 Register as soon after each January first as practicable, but it shall otherwise be exempt from the
199 provisions of section 536.021, RSMo.

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

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

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

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