

SECOND REGULAR SESSION

HOUSE BILL NO. 2364

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE VILLA.

Read 1st time March 6, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5452L.01I

AN ACT

To repeal sections 105.711, 226.095, 537.600, and 537.610, RSMo, and to enact in lieu thereof three new sections relating to civil actions against government entities, agents, officers, and employees.

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

Section A. Sections 105.711, 226.095, 537.600, and 537.610, RSMo, are repealed and
2 three new sections enacted in lieu thereof, to be known as sections 105.711, 537.600, and
3 537.610, to read as follows:

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

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

7 (1) The state of Missouri, or any agency of the state, pursuant to section 536.050 or
8 536.087, RSMo, or section 537.600, RSMo;

9 (2) Any officer or employee of the state of Missouri or any agency of the state, including,
10 without limitation, elected officials, appointees, members of state boards or commissions, and
11 members of the Missouri national guard upon conduct of such officer or employee arising out
12 of and performed in connection with his or her official duties on behalf of the state, or any

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.

13 agency of the state, provided that moneys in this fund shall not be available for payment of
14 claims made under chapter 287, RSMo;

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

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

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

89 (f) Any physician licensed under chapter 334, RSMo, or dentist licensed under chapter
90 332, RSMo, providing medical care without compensation to an individual referred to his or her
91 care by a city or county health department organized under chapter 192 or 205, RSMo, a city
92 health department operating under a city charter, or a combined city-county health department,
93 or nonprofit health center qualified as exempt from federal taxation under Section 501(c)(3) of
94 the Internal Revenue Code of 1986, as amended, or a federally funded community health center
95 organized under Section 315, 329, 330, or 340 of the Public Health Services Act, 42 U.S.C.
96 Section 216, 254c; provided that such treatment shall not include the performance of an abortion.
97 In the case of any claim or judgment that arises under this paragraph, the aggregate of payments
98 from the state legal expense fund shall be limited to a maximum of one million dollars for all
99 claims arising out of and judgments based upon the same act or acts alleged in a single cause and
100 shall not exceed one million dollars for any one claimant, and insurance policies purchased under
101 the provisions of section 105.721 shall be limited to one million dollars. Liability or malpractice
102 insurance obtained and maintained in force by or on behalf of any physician licensed under
103 chapter 334, RSMo, or any dentist licensed under chapter 332, RSMo, shall not be considered
104 available to pay that portion of a judgment or claim for which the state legal expense fund is
105 liable under this paragraph;

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

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

117 (6) Any social welfare board created under section 205.770, RSMo, and the members
118 and officers thereof upon conduct of such officer or employee while acting in his or her capacity
119 as a board member or officer, and any physician, nurse, physician assistant, dental hygienist,
120 dentist, or other health care professional licensed or registered under chapter 330, 331, 332, 334,

121 335, 336, 337, or 338, RSMo, who is referred to provide medical care without compensation by
122 the board and who provides health care services within the scope of his or her license or
123 registration as prescribed by the board.

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

147 4. The attorney general shall promulgate rules regarding contract procedures and the
148 documentation of legal practice provided under subdivision (5) of subsection 2 of this section.
149 The limitation on payments from the state legal expense fund or any policy of insurance procured
150 pursuant to section 105.721 as provided in subsection 7 of this section shall not apply to any
151 claim or judgment arising under subdivision (5) of subsection 2 of this section. Any claim or
152 judgment arising under subdivision (5) of subsection 2 of this section shall be paid by the state
153 legal expense fund or any policy of insurance procured pursuant to section 105.721 to the extent
154 damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice
155 insurance otherwise obtained and maintained in force shall not be considered available under
156 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 **an amount not to exceed:**

(1) [Economic damages to any one claimant] **Two million dollars for all claims arising out of a single accident or occurrence;** and

(2) [Up to three hundred fifty thousand dollars for noneconomic damages] **Three hundred thousand dollars for any one person in a single accident or occurrence.**

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.

192 6. The limitation on awards [for noneconomic damages] provided for in [this] subsection
193 **5 of this section** shall be increased or decreased on an annual basis effective January first of each
194 year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as
195 published by the Bureau of Economic Analysis of the United States Department of Commerce.
196 The current value of the limitation shall be calculated by the director of the department of
197 insurance, who shall furnish that value to the secretary of state, who shall publish such value in
198 the Missouri Register as soon after each January first as practicable, but it shall otherwise be
199 exempt from the 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.

537.600. 1. Such sovereign or governmental tort immunity as existed at common law
2 in this state prior to September 12, 1977, except to the extent waived, abrogated or modified by
3 statutes in effect prior to that date, shall remain in full force and effect; except that, the immunity
4 of the public entity from liability and suit for compensatory damages for negligent acts or
5 omissions is hereby expressly waived in the following instances:

6 (1) Injuries directly resulting from the negligent acts or omissions by public employees
7 arising out of the operation of motor vehicles or motorized vehicles within the course of their
8 employment;

9 (2) Injuries caused by the condition of a public entity's property if the plaintiff establishes
10 that the property was in dangerous condition at the time of the injury, that the injury directly
11 resulted from the dangerous condition, that the dangerous condition created a reasonably
12 foreseeable risk of harm of the kind of injury which was incurred, and that either a negligent or
13 wrongful act or omission of an employee of the public entity within the course of his
14 employment created the dangerous condition or a public entity had actual or constructive notice
15 of the dangerous condition in sufficient time prior to the injury to have taken measures to protect
16 against the dangerous condition. In any action under this subdivision wherein a plaintiff alleges
17 that he was damaged by the negligent, defective or dangerous design of a highway or road, which
18 was designed and constructed prior to September 12, 1977, the public entity shall be entitled to
19 a defense which shall be a complete bar to recovery whenever the public entity can prove by a
20 preponderance of the evidence that the alleged negligent, defective, or dangerous design
21 reasonably complied with highway and road design standards generally accepted at the time the
22 road or highway was designed and constructed.

23 2. **Except as provided in subsection 5 of section 537.610**, the express waiver of
24 sovereign immunity in the instances specified in subdivisions (1) and (2) of subsection 1 of this
25 section are absolute waivers of sovereign immunity in all cases within such situations whether
26 or not the public entity was functioning in a governmental or proprietary capacity and whether
27 or not the public entity is covered by a liability insurance for tort.

28 3. The term "public entity" as used in this section shall include any multistate compact
29 agency created by a compact formed between this state and any other state which has been
30 approved by the Congress of the United States.

537.610. 1. The commissioner of administration, through the purchasing division, and
2 the governing body of each political subdivision of this state, notwithstanding any other
3 provision of law, may purchase liability insurance for tort claims, made against the state or the
4 political subdivision, but the maximum amount of such coverage shall not exceed two million
5 dollars for all claims arising out of a single occurrence and shall not exceed three hundred
6 thousand dollars for any one person in a single accident or occurrence, except for those claims
7 governed by the provisions of the Missouri workers' compensation law, chapter 287, RSMo, and
8 no amount in excess of the above limits shall be awarded or settled upon. Sovereign immunity
9 for the state of Missouri and its political subdivisions is waived only to the maximum amount
10 of and only for the purposes covered by such policy of insurance purchased pursuant to the
11 provisions of this section and in such amount and for such purposes provided in any
12 self-insurance plan duly adopted by the governing body of any political subdivision of the state.

13 2. The liability of the state and its public entities on claims within the scope of sections
14 537.600 to 537.650, shall not exceed two million dollars for all claims arising out of a single

15 accident or occurrence and shall not exceed three hundred thousand dollars for any one person
16 in a single accident or occurrence, except for those claims governed by the provisions of the
17 Missouri workers' compensation law, chapter 287, RSMo.

18 **3. The liability of the state or its public entities and any agent, officer, or employee**
19 **of the state or its public entities arising out of the operation of a motor vehicle being**
20 **operated within the course and scope of their office, employment, or agency with the state**
21 **or its public entities shall not exceed two million dollars for all claims against all such**
22 **entities or individuals arising out of a single accident or occurrence, and shall not exceed**
23 **three hundred thousand dollars for any one person in a single accident or occurrence,**
24 **except for those claims governed by the provisions of the Missouri workers' compensation**
25 **law, chapter 287, RSMo. When a claim against the state or one of its public entities arises**
26 **out of the operation of a motor vehicle as described in subdivision (1) of subsection 1 of**
27 **section 537.600, and a claim is also brought against an agent, officer, or employee of the**
28 **state or its public entities arising out of the same accident or occurrence, the maximum**
29 **allowable recovery against the state, one of its public entities, or any agent, officer, or**
30 **employee of the state or its public entities shall be reduced by any amount paid towards the**
31 **claim by the state, its public entities, agents, officers or employees of the same, or anyone**
32 **acting on their behalf.**

33 **4. The liability of the state or its public entities and any agent, officer, or employee**
34 **of the state or its political entities arising out of any dangerous condition of property which**
35 **the agent, officer, or employee allegedly caused or contributed to cause shall not exceed two**
36 **million dollars for all claims against all such entities or individuals arising out of the single**
37 **accident or occurrence, and shall not exceed three hundred thousand dollars for any one**
38 **person in a single accident or occurrence, except for those claims governed by the**
39 **provisions of the Missouri workers' compensation law, chapter 287, RSMo. When a claim**
40 **against the state or its public entities arises out of a dangerous condition of property as**
41 **described in subdivision (2) of subsection 1 of section 537.600, and the claim is also brought**
42 **against an agent, officer or employee of the state or its public entities for causing or**
43 **contributing to cause the dangerous condition, then the maximum allowable recovery**
44 **against the state or its public entities or any agent, officer, or employee who allegedly**
45 **caused or contributed to cause the dangerous condition shall be reduced by any amount**
46 **paid toward the claim made by the state, its public entities, any agent, officer, or employee**
47 **of the state or its public entities, or anyone acting on their behalf.**

48 **5. The liability of the state or its public entities for operation of a motor vehicle is**
49 **vicarious to the liability of the operator of a motor vehicle that is operated as described by**
50 **subsection 3 of this section. Notwithstanding the provisions of section 537.600, should the**

51 **operator of the motor vehicle owned or operated on behalf of the state or its public entities**
52 **be found to be immune from liability for operation of a motor vehicle because of official**
53 **immunity or otherwise, the state or its public entities shall also have no liability arising**
54 **from the operation of the motor vehicle.**

55 **6.** No award for damages on any claim against a public entity within the scope of
56 sections 537.600 to 537.650, shall include punitive or exemplary damages.

57 **[4.] 7.** If the amount awarded to or settled upon multiple claimants exceeds two million
58 dollars, any party may apply to any circuit court to apportion to each claimant his proper share
59 of the total amount limited by subsection 1 of this section. The share apportioned each claimant
60 shall be in the proportion that the ratio of the award or settlement made to him bears to the
61 aggregate awards and settlements for all claims arising out of the accident or occurrence, but the
62 share shall not exceed three hundred thousand dollars.

63 **[5.] 8.** The limitation on awards for liability provided for in this section shall be
64 increased or decreased on an annual basis effective January first of each year in accordance with
65 the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau
66 of Economic Analysis of the United States Department of Commerce. The current value of the
67 limitation shall be calculated by the director of the department of insurance, who shall furnish
68 that value to the secretary of state, who shall publish such value in the Missouri Register as soon
69 after each January first as practicable, but it shall otherwise be exempt from the provisions of
70 section 536.021, RSMo.

71 **[6.] 9.** Any claim filed against any public entity under this section shall be subject to the
72 penalties provided by supreme court rule 55.03.

73 [226.095. Upon request of the plaintiff in a negligence action against the
74 department of transportation as defendant, the case shall be arbitrated by a panel
75 of three arbiters pursuant to the provisions of chapter 435, RSMo.]

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