

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 2590

## 94TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVES MOORE (Sponsor), KELLY, DEEKEN, SILVEY, WETER, WALLACE, THOMSON, GRISAMORE, NOLTE, FAITH, BROWN (50), KRATKY, WILDBERGER, ROBB, SCHLOTTACH, SMITH (150) AND JONES (89) (Co-sponsors).

Read 1st time April 1, 2008 and copies ordered printed.

Read 2nd time April 2, 2008 and referred to the Committee on Corrections and Public Institutions April 3, 2008.

Reported from the Committee on Corrections and Public Institutions April 9, 2008 with recommendation that the bill Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

Reported from the Committee on Rules April 10, 2008 with recommendation that the bill Do Pass, with no time limit for debate on Perfection.

Taken up for Perfection April 23, 2008. Bill ordered Perfected and printed.

D. ADAM CRUMBLISS, Chief Clerk

5644L.01P

---

## AN ACT

To repeal sections 105.711 and 537.600, RSMo, and to enact in lieu thereof two new sections relating to prohibiting the waiver of sovereign immunity for inmates.

---

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

Section A. Sections 105.711 and 537.600, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 105.711 and 537.600, 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:

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.

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  
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. **The term "officer" or "employee" as used in this**  
15 **subdivision shall not include an offender in the custody, which includes work release**  
16 **outside of a correctional center, of the department of corrections;**

17 (3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse, or other health  
18 care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335,  
19 336, 337 or 338, RSMo, who is employed by the state of Missouri or any agency of the state,  
20 under formal contract to conduct disability reviews on behalf of the department of elementary  
21 and secondary education or provide services to patients or inmates of state correctional facilities  
22 on a part-time basis, and any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse, or  
23 other health care provider licensed to practice in Missouri under the provisions of chapter 330,  
24 332, 334, 335, 336, 337, or 338, RSMo, who is under formal contract to provide services to  
25 patients or inmates at a county jail on a part-time basis;

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

35 (c) Any physician licensed to practice medicine in Missouri under the provisions of  
36 chapter 334, RSMo, who is employed by or under contract with a federally funded community  
37 health center organized under Section 315, 329, 330 or 340 of the Public Health Services Act (42  
38 U.S.C. 216, 254c) to provide services to patients for medical care caused by pregnancy, delivery,  
39 and child care, if such medical services are provided by the physician pursuant to the contract  
40 or employment agreement without compensation or the physician is paid from no other source  
41 than a governmental agency or such a federally funded community health center except for  
42 patient co-payments required by federal or state law or local ordinance. In the case of any claim

43 or judgment that arises under this paragraph, the aggregate of payments from the state legal  
44 expense fund shall be limited to a maximum of one million dollars for all claims arising out of  
45 and judgments based upon the same act or acts alleged in a single cause against any such  
46 physician, and shall not exceed one million dollars for any one claimant;

47 (d) Any physician licensed pursuant to chapter 334, RSMo, who is affiliated with and  
48 receives no compensation from a nonprofit entity qualified as exempt from federal taxation under  
49 Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which offers a free health  
50 screening in any setting or any physician, nurse, physician assistant, dental hygienist, dentist, or  
51 other health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336,  
52 337, or 338, RSMo, who provides health care services within the scope of his or her license or  
53 registration at a city or county health department organized under chapter 192, RSMo, or chapter  
54 205, RSMo, a city health department operating under a city charter, or a combined city-county  
55 health department, or a nonprofit community health center qualified as exempt from federal  
56 taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if such  
57 services are restricted to primary care and preventive health services, provided that such services  
58 shall not include the performance of an abortion, and if such health services are provided by the  
59 health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337,  
60 or 338, RSMo, without compensation. MO HealthNet or Medicare payments for primary care  
61 and preventive health services provided by a health care professional licensed or registered under  
62 chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, who volunteers at a free health clinic  
63 is not compensation for the purpose of this section if the total payment is assigned to the free  
64 health clinic. For the purposes of the section, "free health clinic" means a nonprofit community  
65 health center qualified as exempt from federal taxation under Section 501 (c)(3) of the Internal  
66 Revenue Code of 1987, as amended, that provides primary care and preventive health services  
67 to people without health insurance coverage for the services provided without charge. In the case  
68 of any claim or judgment that arises under this paragraph, the aggregate of payments from the  
69 state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all  
70 claims arising out of and judgments based upon the same act or acts alleged in a single cause and  
71 shall not exceed five hundred thousand dollars for any one claimant, and insurance policies  
72 purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand  
73 dollars. Liability or malpractice insurance obtained and maintained in force by or on behalf of  
74 any health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336,  
75 337, or 338, RSMo, shall not be considered available to pay that portion of a judgment or claim  
76 for which the state legal expense fund is liable under this paragraph;

77 (e) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or  
78 registered to practice medicine, nursing, or dentistry or to act as a physician assistant or dental

79 hygienist in Missouri under the provisions of chapter 332, RSMo, chapter 334, RSMo, or chapter  
80 335, RSMo, who provides medical, nursing, or dental treatment within the scope of his license  
81 or registration to students of a school whether a public, private, or parochial elementary or  
82 secondary school, if such physician's treatment is restricted to primary care and preventive health  
83 services and if such medical, dental, or nursing services are provided by the physician, dentist,  
84 physician assistant, dental hygienist, or nurse without compensation. In the case of any claim  
85 or judgment that arises under this paragraph, the aggregate of payments from the state legal  
86 expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims  
87 arising out of and judgments based upon the same act or acts alleged in a single cause and shall  
88 not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased  
89 pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars;  
90 or

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

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

109 (5) Any attorney licensed to practice law in the state of Missouri who practices law at  
110 or through a nonprofit community social services center qualified as exempt from federal  
111 taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or through  
112 any agency of any federal, state, or local government, if such legal practice is provided by the  
113 attorney without compensation. In the case of any claim or judgment that arises under this  
114 subdivision, the aggregate of payments from the state legal expense fund shall be limited to a

115 maximum of five hundred thousand dollars for all claims arising out of and judgments based  
116 upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand  
117 dollars for any one claimant, and insurance policies purchased pursuant to the provisions of  
118 section 105.721 shall be limited to five hundred thousand dollars; or

119 (6) Any social welfare board created under section 205.770, RSMo, and the members  
120 and officers thereof upon conduct of such officer or employee while acting in his or her capacity  
121 as a board member or officer, and any physician, nurse, physician assistant, dental hygienist,  
122 dentist, or other health care professional licensed or registered under chapter 330, 331, 332, 334,  
123 335, 336, 337, or 338, RSMo, who is referred to provide medical care without compensation by  
124 the board and who provides health care services within the scope of his or her license or  
125 registration as prescribed by the board.

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

149 4. The attorney general shall promulgate rules regarding contract procedures and the  
150 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 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

187 agency of the state in any proceeding against an officer or employee of the state or any agency  
188 of the state. Nothing in this subsection shall limit the rights and remedies otherwise available  
189 to a claimant under state law or common law in proceedings where one or more defendants is  
190 not an officer or employee of the state or any agency of the state.

191         6. The limitation on awards for noneconomic damages provided for in this subsection  
192 shall be increased or decreased on an annual basis effective January first of each year in  
193 accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published  
194 by the Bureau of Economic Analysis of the United States Department of Commerce. The current  
195 value of the limitation shall be calculated by the director of the department of insurance, who  
196 shall furnish that value to the secretary of state, who shall publish such value in the Missouri  
197 Register as soon after each January first as practicable, but it shall otherwise be exempt from the  
198 provisions of section 536.021, RSMo.

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

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

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

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

31 **4. The terms "public employees" and "employee of the public entity" as used in**  
32 **this section shall not include an offender in the custody of the department of corrections**  
33 **or a prisoner in the custody of a county or municipal jail. The term "custody" used in this**  
34 **subsection shall include work release outside of a correctional center or jail. Any court**  
35 **decision issued after August 13, 1978, holding to the contrary of this subsection erroneously**  
36 **interprets the law and public policy of this state.**

✓