

SECOND REGULAR SESSION

HOUSE BILL NO. 1650

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES COOPER (Sponsor), DUSENBERG,
SCHAAF AND SATER (Co-sponsors).

3682L.011

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Section 105.711, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 105.711, to read as follows: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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in 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.

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,
49 **chiropractor**, or other health care professional licensed or registered under chapter 330, 331,
50 332, 334, 335, 336, 337, or 338, RSMo, who provides health care services within the scope of
51 his or her license or registration at a city or county health department organized under chapter
52 192, RSMo, or chapter 205, RSMo, a city health department operating under a city charter, or

53 a combined city-county health department, or a nonprofit community health center qualified as
54 exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as
55 amended, if such services are restricted to primary care, **health care services provided by a**
56 **specialist**, and preventive health services, provided that such services shall not include the
57 performance of an abortion, and if such health services are provided by the health care
58 professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338,
59 RSMo, without compensation. MO HealthNet or Medicare payments for primary care, **health**
60 **care services provided by a specialist**, and preventive health services provided by **a specialist**
61 **or** a health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336,
62 337, or 338, RSMo, who volunteers at a free health clinic is not compensation for the purpose
63 of this section if the total payment is assigned to the free health clinic. For the purposes of the
64 section, "free health clinic" means a nonprofit community health center qualified as exempt from
65 federal 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, 334, or 335, RSMo, or lawfully
81 practicing, who provides medical, nursing, or dental treatment within the scope of his license or
82 registration to students of a school whether a public, private, or parochial elementary or
83 secondary school or summer camp, if such physician's treatment is restricted to primary care and
84 preventive health services and if such medical, dental, or nursing services are provided by the
85 physician, dentist, physician assistant, dental hygienist, or nurse without compensation. In the
86 case of any claim or judgment that arises under this paragraph, the aggregate of payments from
87 the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for
88 all claims arising out of and judgments based upon the same act or acts alleged in a single cause

89 and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies
90 purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand
91 dollars; or

92 (f) Any physician licensed under chapter 334, RSMo, **and such physician's**
93 **professional corporation organized under chapter 356** or dentist licensed under chapter 332,
94 RSMo, **and any licensed health care professional under the direction of a licensed physician**
95 **or dentist** providing medical care without compensation to an individual referred to his or her
96 care by a city or county health department organized under chapter 192 or 205, RSMo, a city
97 health department operating under a city charter, or a combined city-county health department,
98 or nonprofit health center qualified as exempt from federal taxation under Section 501(c)(3) of
99 the Internal Revenue Code of 1986, as amended, or a federally funded community health center
100 organized under Section 315, 329, 330, or 340 of the Public Health Services Act, 42 U.S.C.
101 Section 216, 254c, **or a charitable health care referral network qualified as exempt from**
102 **federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;**
103 provided that such treatment shall not include the performance of an abortion. In the case of any
104 claim or judgment that arises under this paragraph, the aggregate of payments from the state legal
105 expense fund shall be limited to a maximum of one million dollars for all claims arising out of
106 and judgments based upon the same act or acts alleged in a single cause and shall not exceed one
107 million dollars for any one claimant, and insurance policies purchased under the provisions of
108 section 105.721 shall be limited to one million dollars. Liability or malpractice insurance
109 obtained and maintained in force by or on behalf of any physician licensed under chapter 334,
110 RSMo, or any dentist licensed under chapter 332, RSMo, shall not be considered available to pay
111 that portion of a judgment or claim for which the state legal expense fund is liable under this
112 paragraph;

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

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

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

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), (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), (e), or (f) of subdivision (3) of subsection 2 of this section. Any claim or judgment arising under paragraph (a), (b), (c), (d), (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 health care professional licensed or registered 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), (e), or (f) of subdivision (3) of subsection 2 of this section. However, a health care professional licensed or registered 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), (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), (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), (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

160 legal expense fund or any policy of insurance procured pursuant to section 105.721 to the extent
161 damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice
162 insurance otherwise obtained and maintained in force shall not be considered available under
163 subsection 7 of this section to pay that portion of a judgment or claim for which the state legal
164 expense fund is liable under subdivision (5) of subsection 2 of this section. However, an
165 attorney may obtain liability or malpractice insurance for coverage of liability claims or
166 judgments based upon legal practice rendered under subdivision (5) of subsection 2 of this
167 section that exceed the amount of liability coverage provided by the state legal expense fund
168 under subdivision (5) of subsection 2 of this section. Even if subdivision (5) of subsection 2 of
169 this section is repealed or amended, the state legal expense fund shall be available for damages
170 that occur while the pertinent subdivision (5) of subsection 2 of this section is in effect.

171 5. All payments shall be made from the state legal expense fund by the commissioner
172 of administration with the approval of the attorney general. Payment from the state legal expense
173 fund of a claim or final judgment award against a health care professional licensed or registered
174 under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, described in paragraph (a), (b),
175 (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section, or against an attorney in
176 subdivision (5) of subsection 2 of this section, shall only be made for services rendered in
177 accordance with the conditions of such paragraphs. In the case of any claim or judgment against
178 an officer or employee of the state or any agency of the state based upon conduct of such officer
179 or employee arising out of and performed in connection with his or her official duties on behalf
180 of the state or any agency of the state that would give rise to a cause of action under section
181 537.600, RSMo, the state legal expense fund shall be liable, excluding punitive damages, for:

182 (1) Economic damages to any one claimant; and

183 (2) Up to three hundred fifty thousand dollars for noneconomic damages. The state legal
184 expense fund shall be the exclusive remedy and shall preclude any other civil actions or
185 proceedings for money damages arising out of or relating to the same subject matter against the
186 state officer or employee, or the officer's or employee's estate. No officer or employee of the
187 state or any agency of the state shall be individually liable in his or her personal capacity for
188 conduct of such officer or employee arising out of and performed in connection with his or her
189 official duties on behalf of the state or any agency of the state. The provisions of this subsection
190 shall not apply to any defendant who is not an officer or employee of the state or any agency of
191 the state in any proceeding against an officer or employee of the state or any agency of the state.
192 Nothing in this subsection shall limit the rights and remedies otherwise available to a claimant
193 under state law or common law in proceedings where one or more defendants is not an officer
194 or employee of the state or any agency of the state.

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

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

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

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

✓