

SECOND REGULAR SESSION

HOUSE BILL NO. 2671

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HILL.

6745H.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Section A. Section 105.711, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 105.711, to read as follows: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 or section 537.600;

(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;

(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, 336, 337 or 338 who is employed by the state of Missouri or any agency of the state under formal

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.

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

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

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

44 (d) Any physician licensed pursuant to chapter 334 who is affiliated with and receives
45 no compensation from a nonprofit entity qualified as exempt from federal taxation under Section
46 501(c)(3) of the Internal Revenue Code of 1986, as amended, which offers a free health
47 screening in any setting or any physician, nurse, physician assistant, dental hygienist, dentist, or
48 other health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336,
49 337, or 338 who provides health care services within the scope of his or her license or
50 registration at a city or county health department organized under chapter 192 or chapter 205,
51 a city health department operating under a city charter, or a combined city-county health
52 department, or a nonprofit community health center qualified as exempt from federal taxation
53 under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, excluding federally

54 funded community health centers as specified in paragraph (c) of this subdivision and rural
55 health clinics under 42 U.S.C. Section 1396d(l)(1), if such services are restricted to primary care
56 and preventive health services, provided that such services shall not include the performance of
57 an 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 without compensation. MO
59 HealthNet or Medicare payments for primary care and preventive health services provided by a
60 health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337,
61 or 338 who volunteers at a community health clinic is not compensation for the purpose of this
62 section if the total payment is assigned to the community health clinic. For the purposes of the
63 section, "community health clinic" means a nonprofit community health center qualified as
64 exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1987, as
65 amended, that provides primary care and preventive health services to people without health
66 insurance coverage. In the case of any claim or judgment that arises under this paragraph, the
67 aggregate of payments from the state legal expense fund shall be limited to a maximum of five
68 hundred thousand dollars, for all claims arising out of and judgments based upon the same act
69 or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one
70 claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall
71 be limited to five hundred thousand dollars. Liability or malpractice insurance obtained and
72 maintained in force by or on behalf of any health care professional licensed or registered under
73 chapter 330, 331, 332, 334, 335, 336, 337, or 338 shall not be considered available to pay that
74 portion of a judgment or claim for which the state legal expense fund is liable under this
75 paragraph;

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

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

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

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

(6) Any social welfare board created under section 205.770 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 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; or

(7) Any person who is selected or appointed by the state director of revenue under subsection 2 of section 136.055 to act as an agent of the department of revenue, to the extent that

126 such agent's actions or inactions upon which such claim or judgment is based were performed
127 in the course of the person's official duties as an agent of the department of revenue and in the
128 manner required by state law or department of revenue rules.

129 3. The department of health and senior services shall promulgate rules regarding contract
130 procedures and the documentation of care provided under paragraphs (b), (c), (d), (e), and (f) of
131 subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal
132 expense fund or any policy of insurance procured pursuant to the provisions of section 105.721,
133 provided in subsection ~~[7]~~ 8 of this section, shall not apply to any claim or judgment arising
134 under paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section. Any
135 claim or judgment arising under paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of
136 subsection 2 of this section shall be paid by the state legal expense fund or any policy of
137 insurance procured pursuant to section 105.721, to the extent damages are allowed under sections
138 538.205 to 538.235. Liability or malpractice insurance obtained and maintained in force by any
139 health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337,
140 or 338 for coverage concerning his or her private practice and assets shall not be considered
141 available under subsection ~~[7]~~ 8 of this section to pay that portion of a judgment or claim for
142 which the state legal expense fund is liable under paragraph (a), (b), (c), (d), (e), or (f) of
143 subdivision (3) of subsection 2 of this section. However, a health care professional licensed or
144 registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338 may purchase liability or
145 malpractice insurance for coverage of liability claims or judgments based upon care rendered
146 under paragraphs (c), (d), (e), and (f) of subdivision (3) of subsection 2 of this section which
147 exceed the amount of liability coverage provided by the state legal expense fund under those
148 paragraphs. Even if paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of
149 this section is repealed or modified, the state legal expense fund shall be available for damages
150 which occur while the pertinent paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of
151 subsection 2 of this section is in effect.

152 4. The attorney general shall promulgate rules regarding contract procedures and the
153 documentation of legal practice provided under subdivision (5) of subsection 2 of this section.
154 The limitation on payments from the state legal expense fund or any policy of insurance procured
155 pursuant to section 105.721 as provided in subsection ~~[7]~~ 8 of this section shall not apply to any
156 claim or judgment arising under subdivision (5) of subsection 2 of this section. Any claim or
157 judgment arising under subdivision (5) of subsection 2 of this section shall be paid by the state
158 legal expense fund or any policy of insurance procured pursuant to section 105.721 to the extent
159 damages are allowed under sections 538.205 to 538.235. Liability or malpractice insurance
160 otherwise obtained and maintained in force shall not be considered available under subsection
161 ~~[7]~~ 8 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, 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, 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. If a claim is made against the state for an act of an employee of the state while performing his or her job duty and a settlement in the amount of five hundred thousand dollars or more has been paid out from the state legal expense fund, such employee shall be subject to review by the employing agency or department.

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

206 ~~[7-]~~ 8. Except as provided in subsection 3 of this section, in the case of any claim or
207 judgment that arises under sections 537.600 and 537.610 against the state of Missouri, or an
208 agency of the state, the aggregate of payments from the state legal expense fund and from any
209 policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed the
210 limits of liability as provided in sections 537.600 to 537.610. No payment shall be made from
211 the state legal expense fund or any policy of insurance procured with state funds pursuant to
212 section 105.721 unless and until the benefits provided to pay the claim by any other policy of
213 liability insurance have been exhausted.

214 ~~[8-]~~ 9. The provisions of section 33.080 notwithstanding, any moneys remaining to the
215 credit of the state legal expense fund at the end of an appropriation period shall not be transferred
216 to general revenue.

217 ~~[9-]~~ 10. Any rule or portion of a rule, as that term is defined in section 536.010, that is
218 promulgated under the authority delegated in sections 105.711 to 105.726 shall become effective
219 only if it has been promulgated pursuant to the provisions of chapter 536. Nothing in this section
220 shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28,
221 1999, if it fully complied with the provisions of chapter 536. This section and chapter 536 are
222 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536
223 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held
224 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after
225 August 28, 1999, shall be invalid and void.

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