

SECOND REGULAR SESSION

[CORRECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2671

99TH GENERAL ASSEMBLY

6745H.08C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 105.711, RSMo, and to enact in lieu thereof three new sections relating to the payment of certain claims.

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

Section A. Section 105.711, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 105.711, 173.2750, and 287.121, to read as follows: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. **In the case of any claim or judgment that arises under this**
24 **paragraph, the aggregate of payments from the state legal expense fund shall be limited to**
25 **a maximum of five hundred thousand dollars for all claims arising out of any judgments**
26 **based upon the same act or acts alleged in a single cause against any such health care**
27 **provider, and shall not exceed five hundred thousand dollars for any one claimant;**

28 (b) Any physician licensed to practice medicine in Missouri under the provisions of
29 chapter 334 and his professional corporation organized pursuant to chapter 356 who is employed
30 by or under contract with a city or county health department organized under chapter 192 or
31 chapter 205, or a city health department operating under a city charter, or a combined city-county
32 health department to provide services to patients for medical care caused by pregnancy, delivery,
33 and child care, if such medical services are provided by the physician pursuant to the contract
34 without compensation or the physician is paid from no other source than a governmental agency
35 except for patient co-payments required by federal or state law or local ordinance. **In the case**
36 **of any claim or judgment that arises under this paragraph, the aggregate of payments from**
37 **the state legal expense fund shall be limited to a maximum of five hundred thousand**
38 **dollars for all claims arising out of any judgments based upon the same act or acts alleged**
39 **in a single cause against any such physician, and shall not exceed five hundred thousand**
40 **dollars for any one claimant;**

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

54 (d) Any physician licensed pursuant to chapter 334 who is affiliated with and receives
55 no compensation from a nonprofit entity qualified as exempt from federal taxation under Section
56 501(c)(3) of the Internal Revenue Code of 1986, as amended, which offers a free health
57 screening in any setting or any physician, nurse, physician assistant, dental hygienist, dentist, or
58 other health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336,
59 337, or 338 who provides health care services within the scope of his or her license or
60 registration at a city or county health department organized under chapter 192 or chapter 205,
61 a city health department operating under a city charter, or a combined city-county health
62 department, or a nonprofit community health center qualified as exempt from federal taxation
63 under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, excluding federally
64 funded community health centers as specified in paragraph (c) of this subdivision and rural
65 health clinics under 42 U.S.C. Section 1396d(l)(1), if such services are restricted to primary care
66 and preventive health services, provided that such services shall not include the performance of
67 an abortion, and if such health services are provided by the health care professional licensed or
68 registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338 without compensation. MO
69 HealthNet or Medicare payments for primary care and preventive health services provided by a
70 health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337,
71 or 338 who volunteers at a community health clinic is not compensation for the purpose of this
72 section if the total payment is assigned to the community health clinic. For the purposes of the
73 section, "community health clinic" means a nonprofit community health center qualified as
74 exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1987, as
75 amended, that provides primary care and preventive health services to people without health
76 insurance coverage. In the case of any claim or judgment that arises under this paragraph, the
77 aggregate of payments from the state legal expense fund shall be limited to a maximum of five
78 hundred thousand dollars, for all claims arising out of and judgments based upon the same act
79 or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one
80 claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall
81 be limited to five hundred thousand dollars. Liability or malpractice insurance obtained and
82 maintained in force by or on behalf of any health care professional licensed or registered under
83 chapter 330, 331, 332, 334, 335, 336, 337, or 338 shall not be considered available to pay that
84 portion of a judgment or claim for which the state legal expense fund is liable under this
85 paragraph;

86 (e) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or
87 registered to practice medicine, nursing, or dentistry or to act as a physician assistant or dental
88 hygienist in Missouri under the provisions of chapter 332, 334, or 335, or lawfully practicing,
89 who provides medical, nursing, or dental treatment within the scope of his license or registration

90 to students of a school whether a public, private, or parochial elementary or secondary school or
91 summer camp, if such physician's treatment is restricted to primary care and preventive health
92 services and if such medical, dental, or nursing services are provided by the physician, dentist,
93 physician assistant, dental hygienist, or nurse without compensation. In the case of any claim
94 or judgment that arises under this paragraph, the aggregate of payments from the state legal
95 expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims
96 arising out of and judgments based upon the same act or acts alleged in a single cause and shall
97 not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased
98 pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars;
99 or

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

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

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

125 dollars for any one claimant, and insurance policies purchased pursuant to the provisions of
126 section 105.721 shall be limited to five hundred thousand dollars;

127 (6) Any social welfare board created under section 205.770 and the members and officers
128 thereof upon conduct of such officer or employee while acting in his or her capacity as a board
129 member or officer, and any physician, nurse, physician assistant, dental hygienist, dentist, or
130 other health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336,
131 337, or 338 who is referred to provide medical care without compensation by the board and who
132 provides health care services within the scope of his or her license or registration as prescribed
133 by the board; or

134 (7) Any person who is selected or appointed by the state director of revenue under
135 subsection 2 of section 136.055 to act as an agent of the department of revenue, to the extent that
136 such agent's actions or inactions upon which such claim or judgment is based were performed
137 in the course of the person's official duties as an agent of the department of revenue and in the
138 manner required by state law or department of revenue rules.

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

160 which occur while the pertinent paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of
161 subsection 2 of this section is in effect.

162 4. The attorney general shall promulgate rules regarding contract procedures and the
163 documentation of legal practice provided under subdivision (5) of subsection 2 of this section.
164 The limitation on payments from the state legal expense fund or any policy of insurance procured
165 pursuant to section 105.721 as provided in subsection [7] 8 of this section shall not apply to any
166 claim or judgment arising under subdivision (5) of subsection 2 of this section. Any claim or
167 judgment arising under subdivision (5) of subsection 2 of this section shall be paid by the state
168 legal expense fund or any policy of insurance procured pursuant to section 105.721 to the extent
169 damages are allowed under sections 538.205 to 538.235. Liability or malpractice insurance
170 otherwise obtained and maintained in force shall not be considered available under subsection
171 [7] 8 of this section to pay that portion of a judgment or claim for which the state legal expense
172 fund is liable under subdivision (5) of subsection 2 of this section. However, an attorney may
173 obtain liability or malpractice insurance for coverage of liability claims or judgments based upon
174 legal practice rendered under subdivision (5) of subsection 2 of this section that exceed the
175 amount of liability coverage provided by the state legal expense fund under subdivision (5) of
176 subsection 2 of this section. Even if subdivision (5) of subsection 2 of this section is repealed
177 or amended, the state legal expense fund shall be available for damages that occur while the
178 pertinent subdivision (5) of subsection 2 of this section is in effect.

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

- 190 (1) Economic damages to any one claimant; and
191 (2) Up to three hundred fifty thousand dollars for noneconomic damages.

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193 The state legal expense fund shall be the exclusive remedy and shall preclude any other civil
194 actions or proceedings for money damages arising out of or relating to the same subject matter
195 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. (1) If an employee's act or omission while performing his or her job duty directly results in a judgment or settlement by the state in an amount that is more than two hundred fifty thousand dollars in the aggregate to be paid out by the state legal expense fund, such employee shall be subject to review by the employing agency or department to determine if such employee's act or omission shall result in the employee's resignation. Such review shall be initiated within thirty days of the judgment or settlement. If the review determines that such employee's act or omission shall result in resignation, the employee shall resign from employment within thirty days from the completion of the review.

(2) Any person that has resigned under this subsection shall not be eligible for employment by the state until ten years have lapsed since the date of the completion of the review under subdivision (1) of this subsection.

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

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

232 ~~[8.]~~ **9.** The provisions of section 33.080 notwithstanding, any moneys remaining to the
233 credit of the state legal expense fund at the end of an appropriation period shall not be transferred
234 to general revenue.

235 ~~[9.]~~ **10.** Any rule or portion of a rule, as that term is defined in section 536.010, that is
236 promulgated under the authority delegated in sections 105.711 to 105.726 shall become effective
237 only if it has been promulgated pursuant to the provisions of chapter 536. Nothing in this section
238 shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28,
239 1999, if it fully complied with the provisions of chapter 536. This section and chapter 536 are
240 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536
241 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held
242 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after
243 August 28, 1999, shall be invalid and void.

173.2750. Beginning August 28, 2019, if an act or omission of a person employed
2 **by a public institution of higher education directly results in a judgment or settlement,**
3 **such public institution of higher education shall be required to pay:**

4 **(1) Fifty percent of the judgment or settlement amount if the attorney general**
5 **represents the public institution of higher education; or**

6 **(2) One hundred percent of the judgment or settlement amount if the public**
7 **institution of higher education retains outside counsel or represents itself.**

287.121. 1. If an employee's act or omission directly results in a judgment or
2 **settlement under this chapter in an amount that is more than two hundred fifty thousand**
3 **dollars in the aggregate, such employee shall be subject to review by the employing agency**
4 **or department to determine if such employee's act or omission shall result in the**
5 **employee's resignation. Such review shall be initiated within thirty days of the judgment**
6 **or settlement. If the review determines that such employee's act or omission shall result**
7 **in resignation, the employee shall resign from employment within thirty days from the**
8 **completion of the review.**

9 **2. Any person that has resigned under this section shall not be eligible for**
10 **employment by the state until ten years have lapsed since the date of the completion of the**
11 **review under subsection 1 of this section.**

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