

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 103,
2 Page 1, Section A, Line 4, by inserting after said section and line the following:

3
4 "105.711. 1. There is hereby created a "State Legal Expense Fund" which shall consist of
5 moneys appropriated to the fund by the general assembly and moneys otherwise credited to such
6 fund pursuant to section 105.716.

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

9 (1) The state of Missouri, or any agency of the state, pursuant to section 536.050 or 536.087
10 or section 537.600;

11 (2) Any officer or employee of the state of Missouri or any agency of the state, including,
12 without limitation, elected officials, appointees, members of state boards or commissions, and
13 members of the Missouri National Guard upon conduct of such officer or employee arising out of
14 and performed in connection with his or her official duties on behalf of the state, or any agency of
15 the state, provided that moneys in this fund shall not be available for payment of claims made under
16 chapter 287;

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

26 (b) Any physician licensed to practice medicine in Missouri under the provisions of chapter
27 334 and his professional corporation organized pursuant to chapter 356 who is employed by or
28 under contract with a city or county health department organized under chapter 192 or chapter 205,
29 or a city health department operating under a city charter, or a combined city-county health
30 department to provide services to patients for medical care caused by pregnancy, delivery, and child

Action Taken _____ Date _____

1 care, if such medical services are provided by the physician pursuant to the contract without
2 compensation or the physician is paid from no other source than a governmental agency except for
3 patient co-payments required by federal or state law or local ordinance;

4 (c) Any physician licensed to practice medicine in Missouri under the provisions of chapter
5 334 who is employed by or under contract with a federally funded community health center
6 organized under Section 315, 329, 330 or 340 of the Public Health Services Act (42 U.S.C. Section
7 216, 254c) to provide services to patients for medical care caused by pregnancy, delivery, and child
8 care, if such medical services are provided by the physician pursuant to the contract or employment
9 agreement without compensation or the physician is paid from no other source than a governmental
10 agency or such a federally funded community health center except for patient co-payments required
11 by federal or state law or local ordinance. In the case of any claim or judgment that arises under this
12 paragraph, the aggregate of payments from the state legal expense fund shall be limited to a
13 maximum of one million dollars for all claims arising out of and judgments based upon the same act
14 or acts alleged in a single cause against any such physician, and shall not exceed one million dollars
15 for any one claimant;

16 (d) Any physician licensed pursuant to chapter 334 who is affiliated with and receives no
17 compensation from a nonprofit entity qualified as exempt from federal taxation under Section
18 501(c)(3) of the Internal Revenue Code of 1986, as amended, which offers a free health screening in
19 any setting or any physician, nurse, physician assistant, dental hygienist, dentist, or other health care
20 professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338 who
21 provides health care services within the scope of his or her license or registration at a city or county
22 health department organized under chapter 192 or chapter 205, a city health department operating
23 under a city charter, or a combined city-county health department, or a nonprofit community health
24 center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue
25 Code of 1986, as amended, excluding federally funded community health centers as specified in
26 paragraph (c) of this subdivision and rural health clinics under 42 U.S.C. Section 1396d(l)(1), if
27 such services are restricted to primary care and preventive health services, provided that such
28 services shall not include the performance of an abortion, and if such health services are provided by
29 the health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337,
30 or 338 without compensation. MO HealthNet or Medicare payments for primary care and
31 preventive health services provided by a health care professional licensed or registered under
32 chapter 330, 331, 332, 334, 335, 336, 337, or 338 who volunteers at a community health clinic is not
33 compensation for the purpose of this section if the total payment is assigned to the community
34 health clinic. For the purposes of the section, "community health clinic" means a nonprofit
35 community health center qualified as exempt from federal taxation under Section 501(c)(3) of the
36 Internal Revenue Code of 1987, as amended, that provides primary care and preventive health
37 services to people without health insurance coverage. In the case of any claim or judgment that
38 arises under this paragraph, the aggregate of payments from the state legal expense fund shall be
39 limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments

1 based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand
2 dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section
3 105.721 shall be limited to five hundred thousand dollars. Liability or malpractice insurance
4 obtained and maintained in force by or on behalf of any health care professional licensed or
5 registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338 shall not be considered available
6 to pay that portion of a judgment or claim for which the state legal expense fund is liable under this
7 paragraph;

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

21 (f) Any physician licensed under chapter 334, or dentist licensed under chapter 332,
22 providing medical care without compensation to an individual referred to his or her care by a city or
23 county health department organized under chapter 192 or 205, a city health department operating
24 under a city charter, or a combined city-county health department, or nonprofit health center
25 qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of
26 1986, as amended, or a federally funded community health center organized under Section 315, 329,
27 330, or 340 of the Public Health Services Act, 42 U.S.C. Section 216, 254c; provided that such
28 treatment shall not include the performance of an abortion. In the case of any claim or judgment
29 that arises under this paragraph, the aggregate of payments from the state legal expense fund shall
30 be limited to a maximum of one million dollars for all claims arising out of and judgments based
31 upon the same act or acts alleged in a single cause and shall not exceed one million dollars for any
32 one claimant, and insurance policies purchased under the provisions of section 105.721 shall be
33 limited to one million dollars. Liability or malpractice insurance obtained and maintained in force
34 by or on behalf of any physician licensed under chapter 334, or any dentist licensed under chapter
35 332, shall not be considered available to pay that portion of a judgment or claim for which the state
36 legal expense fund is liable under this paragraph;

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

38 (5) Any attorney licensed to practice law in the state of Missouri who practices law at or
39 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 such agent's actions or inactions upon which such claim or judgment is based were performed in the course of the person's official duties as an agent of the department of revenue and in the manner required by state law or department of revenue rules.

3. Moneys in the state legal expense fund shall be available for the reimbursement of any claim to a county of any amount incurred by the circuit court in any proceeding of the judicial finance commission that has been paid by the county pursuant to section 476.270.

4. 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. 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 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 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-] 5. 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 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. 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-] 6. 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

1 state officer or employee, or the officer's or employee's estate. No officer or employee of the state
 2 or any agency of the state shall be individually liable in his or her personal capacity for conduct of
 3 such officer or employee arising out of and performed in connection with his or her official duties
 4 on behalf of the state or any agency of the state. The provisions of this subsection shall not apply to
 5 any defendant who is not an officer or employee of the state or any agency of the state in any
 6 proceeding against an officer or employee of the state or any agency of the state. Nothing in this
 7 subsection shall limit the rights and remedies otherwise available to a claimant under state law or
 8 common law in proceedings where one or more defendants is not an officer or employee of the state
 9 or any agency of the state.

10 ~~[6.]~~ 7. The limitation on awards for noneconomic damages provided for in this subsection
 11 shall be increased or decreased on an annual basis effective January first of each year in accordance
 12 with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau
 13 of Economic Analysis of the United States Department of Commerce. The current value of the
 14 limitation shall be calculated by the director of the department of commerce and insurance, who
 15 shall furnish that value to the secretary of state, who shall publish such value in the Missouri
 16 Register as soon after each January first as practicable, but it shall otherwise be exempt from the
 17 provisions of section 536.021.

18 ~~[7.]~~ 8. Except as provided in subsection 3 of this section, in the case of any claim or
 19 judgment that arises under sections 537.600 and 537.610 against the state of Missouri, or an agency
 20 of the state, the aggregate of payments from the state legal expense fund and from any policy of
 21 insurance procured pursuant to the provisions of section 105.721 shall not exceed the limits of
 22 liability as provided in sections 537.600 to 537.610. No payment shall be made from the state legal
 23 expense fund or any policy of insurance procured with state funds pursuant to section 105.721
 24 unless and until the benefits provided to pay the claim by any other policy of liability insurance have
 25 been exhausted.

26 ~~[8.]~~ 9. The provisions of section 33.080 notwithstanding, any moneys remaining to the
 27 credit of the state legal expense fund at the end of an appropriation period shall not be transferred to
 28 general revenue.

29 ~~[9.]~~ 10. Any rule or portion of a rule, as that term is defined in section 536.010, that is
 30 promulgated under the authority delegated in sections 105.711 to 105.726 shall become effective
 31 only if it has been promulgated pursuant to the provisions of chapter 536. Nothing in this section
 32 shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28,
 33 1999, if it fully complied with the provisions of chapter 536. This section and chapter 536 are
 34 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to
 35 review, to delay the effective date, or to disapprove and annul a rule are subsequently held
 36 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after
 37 August 28, 1999, shall be invalid and void."; and
 38

Further amend said bill, Page 8, Section 476.1313, Line 56, by inserting after said section and line the following:

"477.600. 1. There is hereby created within the judicial department a "Judicial Finance Commission". The commission shall be composed of seven members appointed by the supreme court. At least one member of the commission shall be a member of a county governing body from a county of the third class, one member of the commission shall be a member of the county governing body of a county of the first class, and one member of the commission shall be a member of a county governing body from any class of county. The supreme court shall designate one member to serve as chairman and one member as vice chairman. The vice chairman shall preside in the absence of the chairman.

2. The members of the commission shall serve for terms of three years and until their successors are appointed and qualified; except that of the initial members appointed, three shall serve for terms of one year, two shall serve for terms of two years and two shall serve for terms of three years, as designated by the court.

3. If a vacancy occurs the court shall appoint a replacement. The replacement shall serve the unexpired portion of the term and may be appointed to successive terms.

4. The commission shall promulgate rules of procedure which shall become effective upon approval by the supreme court. The supreme court may adopt such other rules as it deems appropriate to govern the procedures of the commission.

5. The commission shall:

(1) Examine the budget request of the circuit court upon the petition by the county governing body as provided in section 50.640 or any budget or item in the budget estimated by the court including, but not limited to, compensation of deputy sheriffs and assistants, as set forth in section 57.250;

(2) Issue a written opinion addressed to the presiding circuit judge and the presiding officer of the county. The opinion shall state the conclusions of the commission as to the reasonableness of the circuit court budget request. The opinion of the commission shall state clearly the reasons for its decision. Any member of the commission who disagrees with the commission's findings may file a minority report;

(3) Maintain accurate records of the cost and expenses of the judicial and law enforcement agencies for each county;

(4) Submit an annual report to the governor, general assembly, and supreme court on the finances of the judicial department. The report shall examine both the revenues of the department and the expenses of the department. The report shall include the information from all divisions of the circuit court of each county including the circuit, associate circuit, probate, juvenile and municipal divisions. The information shall be reported separately except where the divisions are combined or consolidated. In lieu of separate publication, the supreme court may direct the annual report described in this subdivision to be consolidated with any annual report prepared by the

1 supreme court or the office of state courts administrator, provided that such report is distributed to
2 the parties described in this subdivision.

3 6. In discharging its responsibilities, the commission may:

4 (1) Conduct public hearings, take testimony, summon witnesses, and subpoena records and
5 documents;

6 (2) Conduct surveys and collect data from county governments and the circuit courts on the
7 operations of the judicial and law enforcement agencies in each county. The commission and its
8 staff shall be granted access at any reasonable time to all books, records, and data the commission
9 deems necessary for the administration of its duties;

10 (3) Within the limits of appropriations made for the purpose, appoint special committees,
11 accept and expend grant funds, and employ consultants and others to assist the commission in its
12 work.

13 7. Upon receipt of the written opinion of the commission or upon refusal of the commission
14 to accept a petition for review, the circuit court or the county governing body may seek a review by
15 the supreme court by filing a petition for review in the supreme court within thirty days of the
16 receipt of the commission's opinion. If a petition for review is not filed in the supreme court, then
17 the recommendation of the commission shall take effect notwithstanding the provisions of section
18 50.600. If the commission refused to review a petition and no petition is filed in the supreme court,
19 the circuit court budget is approved as submitted to the county governing body. The supreme court
20 shall consider the petition for review de novo.

21 8. The commission shall meet as necessary at the call of the chairman or on written request
22 of four members. Four members constitute a quorum for the transaction of business. Upon request
23 of the chairman, the supreme court may appoint a temporary replacement for any commissioner who
24 is unable to hear a case or who is disqualified from any case. No member of the commission shall
25 participate in any proceeding involving the county or circuit where the member resides.

26 9. Members of the commission shall receive no compensation for their services but shall be
27 reimbursed out of funds appropriated for this purpose for their actual and necessary expenses
28 incurred in the performance of their duties.

29 10. The clerk of the supreme court shall provide suitable staff for the commission out of any
30 funds appropriated for this purpose. The commission may also employ court reporters as necessary
31 to take testimony at hearings held pursuant to section 50.640. The reporters shall be compensated at
32 a rate established by the commission out of any funds appropriated for this purpose.

33 11. Any legal services required for representation of the circuit court in a proceeding of the
34 judicial finance commission, including the review of any petitions pursuant to section 50.640, shall
35 be provided by the attorney general, unless hiring of private council is authorized by the circuit
36 court. Any legal services required for representation of the county in a proceeding of the judicial
37 finance commission, including the review of any petitions pursuant to section 50.640, shall be
38 provided by the county prosecuting attorney or county attorney, unless hiring of private council is
39 authorized by the county commission. Application for reimbursement of any fees, costs, and

1 expenses paid by the county pursuant to section 476.270 may be made by the county to the state
2 legal expense fund established by section 105.711."; and
3
4 Further amend said bill by amending the title, enacting clause, and intersectional references
5 accordingly.