

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2610
103RD GENERAL ASSEMBLY

6115H.03C

JOSEPH ENGLER, 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Section A. Section 105.711, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 105.711, to read as follows: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 contract to conduct disability reviews on behalf of the department of elementary

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.

19 and secondary education or provide services to patients or inmates of state correctional
20 facilities on a part-time basis, and any physician, psychiatrist, pharmacist, podiatrist, dentist,
21 nurse, or other health care provider licensed to practice in Missouri under the provisions of
22 chapter 330, 332, 334, 335, 336, 337, or 338 who is under formal contract to provide services
23 to 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 and his professional corporation organized pursuant to chapter 356 who is
26 employed by or under contract with a city or county health department organized under
27 chapter 192 or chapter 205, or a city health department operating under a city charter, or a
28 combined city-county health department to provide services to patients for medical care
29 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
31 other source than a governmental agency except for patient co-payments required by federal
32 or state law or local ordinance. **In the case of any claim or judgment that arises under this**
33 **paragraph, the aggregate of payments from the state legal expense fund shall be limited**
34 **to a maximum of one million dollars for all claims arising out of and judgments based**
35 **upon the same act or acts alleged in a single cause against any such physician, and shall**
36 **not exceed one million dollars for any one claimant;**

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

50 (d) Any physician licensed pursuant to chapter 334 who is affiliated with and receives
51 no compensation from a nonprofit entity qualified as exempt from federal taxation under
52 Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which offers a free
53 health screening in any setting or any physician, nurse, physician assistant, dental hygienist,
54 dentist, or other health care professional licensed or registered under chapter 330, 331, 332,
55 334, 335, 336, 337, or 338 who provides health care services within the scope of his or her

56 license or registration at a city or county health department organized under chapter 192 or
57 chapter 205, a city health department operating under a city charter, or a combined city-
58 county health department, or a nonprofit community health center qualified as exempt from
59 federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended,
60 excluding federally funded community health centers as specified in paragraph (c) of this
61 subdivision and rural health clinics under 42 U.S.C. Section 1396d(l)(1), if such services are
62 restricted to primary care and preventive health services, provided that such services shall not
63 include the performance of an abortion, and if such health services are provided by the health
64 care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or
65 338 without compensation. MO HealthNet or Medicare payments for primary care and
66 preventive health services provided by a health care professional licensed or registered under
67 chapter 330, 331, 332, 334, 335, 336, 337, or 338 who volunteers at a community health
68 clinic is not compensation for the purpose of this section if the total payment is assigned to
69 the community health clinic. For the purposes of the section, "community health clinic"
70 means a nonprofit community health center qualified as exempt from federal taxation under
71 Section 501(c)(3) of the Internal Revenue Code of 1987, as amended, that provides primary
72 care and preventive health services to people without health insurance coverage. In the case
73 of any claim or judgment that arises under this paragraph, the aggregate of payments from the
74 state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for
75 all claims arising out of and judgments based upon the same act or acts alleged in a single
76 cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance
77 policies purchased pursuant to the provisions of section 105.721 shall be limited to five
78 hundred thousand dollars. Liability or malpractice insurance obtained and maintained in
79 force by or on behalf of any health care professional licensed or registered under chapter 330,
80 331, 332, 334, 335, 336, 337, or 338 shall not be considered available to pay that portion of a
81 judgment or claim for which the state legal expense fund is liable under this paragraph;

82 (e) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or
83 registered to practice medicine, nursing, or dentistry or to act as a physician assistant or dental
84 hygienist in Missouri under the provisions of chapter 332, 334, or 335, or lawfully practicing,
85 who provides medical, nursing, or dental treatment within the scope of his license or
86 registration to students of a school whether a public, private, or parochial elementary or
87 secondary school or summer camp, if such physician's treatment is restricted to primary care
88 and preventive health services and if such medical, dental, or nursing services are provided by
89 the physician, dentist, physician assistant, dental hygienist, or nurse without compensation.
90 In the case of any claim or judgment that arises under this paragraph, the aggregate of
91 payments from the state legal expense fund shall be limited to a maximum of five hundred
92 thousand dollars, for all claims arising out of and judgments based upon the same act or acts

93 alleged in a single cause and shall not exceed five hundred thousand dollars for any one
94 claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall
95 be limited to five hundred thousand dollars; or

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

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

130 the board and who provides health care services within the scope of his or her license or
131 registration as prescribed by the board; ~~[or]~~

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

137 **(8) Any entity, including its members, officers, or employees, that provides**
138 **under contract or subcontract foster care case management services or residential**
139 **services pursuant to chapter 210 including, but not limited to, services under section**
140 **210.112 or 210.119. In the case of any claim or judgment that arises under this**
141 **subdivision, the aggregate of payments from the state legal expense fund shall be limited**
142 **to a maximum of one million dollars for all claims arising out of and judgments based**
143 **upon the same act or acts alleged in a single cause and shall not exceed one million**
144 **dollars for any one claimant, and insurance policies purchased pursuant to the**
145 **provisions of section 105.721 shall be limited to one million dollars.**

146 3. The department of health and senior services shall promulgate rules regarding
147 contract procedures and the documentation of care provided under paragraphs (b), (c), (d),
148 (e), and (f) of subdivision (3) of subsection 2 of this section. The limitation on payments
149 from the state legal expense fund or any policy of insurance procured pursuant to the
150 provisions of section 105.721, provided in subsection 7 of this section, shall not apply to any
151 claim or judgment arising under paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of
152 subsection 2 of this section. Any claim or judgment arising under paragraph (a), (b), (c), (d),
153 (e), or (f) of subdivision (3) of subsection 2 of this section shall be paid by the state legal
154 expense fund or any policy of insurance procured pursuant to section 105.721, to the extent
155 damages are allowed under sections 538.205 to 538.235. Liability or malpractice insurance
156 obtained and maintained in force by any health care professional licensed or registered under
157 chapter 330, 331, 332, 334, 335, 336, 337, or 338 for coverage concerning his or her private
158 practice and assets shall not be considered available under subsection 7 of this section to pay
159 that portion of a judgment or claim for which the state legal expense fund is liable under
160 paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section.
161 However, a health care professional licensed or registered under chapter 330, 331, 332, 334,
162 335, 336, 337, or 338 may purchase liability or malpractice insurance for coverage of liability
163 claims or judgments based upon care rendered under paragraphs (c), (d), (e), and (f) of
164 subdivision (3) of subsection 2 of this section which exceed the amount of liability coverage
165 provided by the state legal expense fund under those paragraphs. Even if paragraph (a), (b),
166 (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section is repealed or modified, the

167 state legal expense fund shall be available for damages which occur while the pertinent
168 paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section is in
169 effect.

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

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

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

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203 The state legal expense fund shall be the exclusive remedy and shall preclude any other civil
204 actions or proceedings for money damages arising out of or relating to the same subject
205 matter against the state officer or employee, or the officer's or employee's estate. No officer
206 or employee of the state or any agency of the state shall be individually liable in his or her
207 personal capacity for conduct of such officer or employee arising out of and performed in
208 connection with his or her official duties on behalf of the state or any agency of the state. The
209 provisions of this subsection shall not apply to any defendant who is not an officer or
210 employee of the state or any agency of the state in any proceeding against an officer or
211 employee of the state or any agency of the state. Nothing in this subsection shall limit the
212 rights and remedies otherwise available to a claimant under state law or common law in
213 proceedings where one or more defendants is not an officer or employee of the state or any
214 agency of the state.

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

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

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

234 9. Any rule or portion of a rule, as that term is defined in section 536.010, that is
235 promulgated under the authority delegated in sections 105.711 to 105.726 shall become
236 effective only if it has been promulgated pursuant to the provisions of chapter 536. Nothing
237 in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted
238 prior to August 28, 1999, if it fully complied with the provisions of chapter 536. This section
239 and chapter 536 are nonseverable and if any of the powers vested with the general assembly

240 pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a
241 rule are subsequently held unconstitutional, then the grant of rulemaking authority and any
242 rule proposed or adopted after August 28, 1999, shall be invalid and void.

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