

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 2610

103RD GENERAL ASSEMBLY

6115H.03P

JOSEPH ENGLER, Chief Clerk

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## AN ACT

To repeal section 105.711, RSMo, and to enact in lieu thereof one new section relating to the state legal expense fund.

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Section A. Section 105.711, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 105.711, to read as follows: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

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 under formal contract to conduct disability reviews on behalf of the department of elementary  
19 and secondary education or provide services to patients or inmates of state correctional  
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;

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

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

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

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

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

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

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

121 (6) Any social welfare board created under section 205.770 and the members and  
122 officers thereof upon conduct of such officer or employee while acting in his or her capacity  
123 as a board member or officer, and any physician, nurse, physician assistant, dental hygienist,  
124 dentist, or other health care professional licensed or registered under chapter 330, 331, 332,  
125 334, 335, 336, 337, or 338 who is referred to provide medical care without compensation by  
126 the board and who provides health care services within the scope of his or her license or  
127 registration as prescribed by the board; [✗]

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

133 **(8) Any entity, including its members, officers, or employees, that provides**  
134 **under contract or subcontract foster care case management services or residential**  
135 **services pursuant to chapter 210 including, but not limited to, services under section**  
136 **210.112 or 210.119. In the case of any claim or judgment that arises under this**  
137 **subdivision, the aggregate of payments from the state legal expense fund shall be limited**  
138 **to a maximum of one million dollars for all claims arising out of and judgments based**  
139 **upon the same act or acts alleged in a single cause and shall not exceed one million**  
140 **dollars for any one claimant, and insurance policies purchased pursuant to the**  
141 **provisions of section 105.721 shall be limited to one million dollars.**

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

164 paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section is in  
165 effect.

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

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

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

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199 The state legal expense fund shall be the exclusive remedy and shall preclude any other civil  
200 actions or proceedings for money damages arising out of or relating to the same subject

201 matter against the state officer or employee, or the officer's or employee's estate. No officer  
202 or employee of the state or any agency of the state shall be individually liable in his or her  
203 personal capacity for conduct of such officer or employee arising out of and performed in  
204 connection with his or her official duties on behalf of the state or any agency of the state. The  
205 provisions of this subsection shall not apply to any defendant who is not an officer or  
206 employee of the state or any agency of the state in any proceeding against an officer or  
207 employee of the state or any agency of the state. Nothing in this subsection shall limit the  
208 rights and remedies otherwise available to a claimant under state law or common law in  
209 proceedings where one or more defendants is not an officer or employee of the state or any  
210 agency of the state.

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

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

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

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

237 rule are subsequently held unconstitutional, then the grant of rulemaking authority and any  
238 rule proposed or adopted after August 28, 1999, shall be invalid and void.

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