

SECOND REGULAR SESSION

SENATE BILL NO. 761

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHNEIDER.

Pre-filed January 3, 2000, and 1,000 copies ordered printed.

3447S.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 537.675, RSMo Supp. 1999, relating to the tort victims' compensation fund, and to enact in lieu thereof seven new sections relating to the same subject.

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

Section A. Section 537.675, RSMo Supp. 1999, is repealed and seven new sections enacted in lieu thereof, to be known as sections 537.675, 537.678, 537.681, 537.684, 537.687, 537.690 and 537.693, to read as follows:

537.675. 1. There is created the "Tort Victims' Compensation Fund". Unexpended moneys in the fund shall not lapse at the end of the biennium as provided in section 33.080, RSMo.

2. [Fifty percent of any final judgment awarding punitive damages after the deduction of attorneys' fees and expenses shall be deemed rendered in favor of the state of Missouri. The circuit clerks shall notify the attorney general of any final judgment awarding punitive damages rendered in their circuits. With respect to such fifty percent, the attorney general shall collect upon such judgment, and may execute or make settlements with respect thereto as he deems appropriate for deposit into the fund.] **The attorney general shall be notified by the plaintiff or plaintiffs of any case in which punitive damages are sought, except for actions brought for improper health care pursuant to chapter 538, RSMo. The state of Missouri shall have a lien to the extent of fifty percent of punitive damages awarded by final judgment in any such case, which shall attach when the final judgment is rendered and all appeals become final. In each case, the attorney general shall serve a lien notice by certified mail or registered mail upon the party or parties against whom the state has a claim. After written notice to all interested parties, the court shall determine the rights of the parties regarding the lien. The lien shall not be satisfied out of any**

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

recovery until the attorney's claim for fees and expenses is paid. Cases resolved by arbitration, mediation or compromise settlement prior to final judgment are exempt from the provisions of this subsection. Nothing in this chapter shall hinder or in any way affect the right or ability of the parties to any claim or lawsuit to compromise or settle such claim or litigation on any terms and at any time the parties desire.

3. The state of Missouri shall have no interest in or right to intervene at any stage of any judicial proceeding [under] **pursuant to** this section.

4. [No disbursement shall be made from the tort victims' compensation fund until procedures for disbursement are established by further action of the general assembly.] **There is hereby established in the state treasury the "Legal Services for Low-Income People Fund", which shall consist of twenty-five percent of all payments received by the tort victims' compensation fund regardless of source or designation. Moneys, funds or payments paid to the credit of the legal services for low-income people fund shall, at least as often as annually, upon appropriation, be distributed by the state treasurer to the legal services organizations in Missouri which are recipients of federal Legal Services Corporation funding and shall be used for no other purpose than as authorized pursuant to sections 537.675 to 537.693. The funds so distributed shall be used by legal services organizations in Missouri to provide legal services to its low-income population, in the manner approved by the board of directors of each legal services organization. Funds shall be allocated in their distribution by the state treasurer according to the most recent official census data from the Bureau of Census, United States Department of Commerce for people in poverty residing in Missouri. Notwithstanding the provisions of section 33.080, RSMo, any balance remaining in the legal services for low-income people at the end of an appropriation period shall not be transferred to general revenue, but shall remain in the fund and be distributed in accordance with the provisions of this section.**

537.678. 1. Seventy-five percent of all payments received by the tort victims' compensation fund regardless of source or designation shall, upon appropriation, be credited to the division of workers' compensation to assist uncompensated tort victims and shall be used for no other purpose. Notwithstanding the provisions of section 33.080, RSMo, any balance remaining in the budget of the division of workers' compensation for compensation of uncompensated tort victims shall not be transferred to general revenue but shall remain in the fund.

2. The division of workers' compensation shall, pursuant to the provisions of sections 537.678 to 537.693, have jurisdiction to determine and award compensation to or on behalf of uncompensated tort victims. An "uncompensated tort victim" is a prevailing plaintiff in a civil tort case that has received a final monetary judgment against a tortfeasor, but is unable to collect or enforce the judgment. The requirement

for a final judgment may be waived based on a showing of good cause, including but not limited to the tortfeasor's bankruptcy or inability to identify the tortfeasor. The division is not required to provide compensation, nor is it required to award the full amount claimed. The division shall base its award of compensation upon independent verification obtained during its investigation. In no case shall the amount paid to the individual exceed the lesser of either the award granted by the court or jury, or the amount remaining in the tort victims' compensation fund, provided, however, that no award shall exceed three hundred thousand dollars.

3. Claims shall be made by filing an application for compensation with the division of workers' compensation, and the signature of the claimant shall be notarized. The division shall furnish an application form which shall include:

- (1) The name and address of the uncompensated victim;
- (2) If the claimant is not the uncompensated victim, the name and address of the claimant and relationship to the victim, the name and address of any dependents of the victim, and the extent to which each is so dependent;
- (3) The date and nature of the tort on which the application for compensation is based;
- (4) The date and court in which a judgment was rendered against the tortfeasor, including the judgment amount specifying medical costs, if available;
- (5) The nature and extent of the qualifying injuries sustained by the victim, the names and addresses of those giving medical and hospital treatment to the victim and whether death resulted;
- (6) The loss to the claimant or a dependent resulting from the injury or death;
- (7) The amount of benefits, payments or awards, if any, payable from any source that the claimant or dependent has received or for which the claimant or dependent is eligible as a result of the injury or death;
- (8) Releases by the uncompensated victim authorizing any reports, documents and other information relating to the matters specified pursuant to this section to be transferred to the division; and
- (9) Any other information as the division determines is necessary.

4. In addition to the application, the division may require that the claimant submit materials substantiating the facts stated in the application.

5. If the division finds that an application does not contain the required information or that the facts stated therein have not been substantiated, it shall notify the claimant in writing of the specific additional items or information or materials required and that the claimant has thirty days from the date of mailing in which to furnish those items to the division. Unless a claimant requests and is granted an extension of time by the division, the division may reject the claim of the claimant for

failure to file the additional information or materials within the specified time.

6. The claimant may file an amended application or additional substantiating materials to correct inadvertent errors or omissions at any time before the division has completed its consideration of the original application.

7. Any state or local agency, including a prosecuting attorney or law enforcement agency, shall make available without cost to the fund, all reports, files and other appropriate information that the division requests in order to make a determination that a claimant is eligible for an award pursuant to sections 537.675 to 537.693.

537.681. 1. The following persons shall be eligible for compensation pursuant to sections 537.675 to 537.693:

(1) An uncompensated tort victim as defined in section 537.678;

(2) In the case of the death of the uncompensated victim as a direct result of the tort:

(a) The class of persons identified in subsection 1 of section 537.080;

(b) Any member of the family who legally assumes the obligation, or who incurred medical or burial expenses as a direct result of the tort at issue.

2. An uncompensated tort victim that is found personally liable on a cross-complaint of tort, or found to have been contributorily or comparatively negligent, shall only be eligible to receive compensation to the extent of the amount awarded by the judge or jury. No uncompensated victim or dependent shall be denied compensation solely because he is a relative of the tortfeasor or was living with the tortfeasor as a family or household member at the time of the injury or death. The division, however, may award compensation to a victim or dependent who is a relative, family or household member of the tortfeasor, if the division can reasonably determine the tortfeasor will receive no substantial economic benefit or unjust enrichment from the compensation.

3. No compensation of any kind may be made to an uncompensated victim or intervenor injured while confined in any federal, state, county, or municipal jail, prison or other correctional facility, including house arrest.

4. No compensation of any kind may be made to an uncompensated victim who has been finally adjudicated and found guilty, in a criminal prosecution pursuant to the laws of this state, of two felonies within the past ten years, of which one or both involve illegal drugs or violence. The division may waive this restriction if it determines that the interest of justice would be served otherwise.

5. In the case of an uncompensated victim who is not otherwise ineligible pursuant to subsection 4 of this section, who is incarcerated as a result of a conviction of a crime not related to the incident upon which the claim is based at the time of

application, or at any time following the filing of the application:

(1) The division shall suspend all proceedings and payments until such time as the uncompensated victim is released from incarceration;

(2) The division shall notify the application at the time the proceedings are suspended of the right to reactivate the claim within six months of release from incarceration. The notice shall be deemed sufficient if mailed to the applicant at the applicant's last known address;

(3) The uncompensated victim may file an application to request that the case be reactivated not later than six months after the date the claimant is released from incarceration. Failure to file such request within the six-month period shall serve as a bar to any recovery.

6. Uncompensated victims of torts who are not residents of the state of Missouri may be compensated only when the cause of action accrued in Missouri or when federal funds are available for that purpose.

7. A Missouri resident who suffers personal physical injury or, in the case of death, the person or persons entitled to bring an action for wrongful death pursuant to section 537.080, may make application for compensation in Missouri if:

(1) The uncompensated victim would be otherwise eligible for compensation pursuant to sections 537.678 to 537.693 if the tort had occurred in the state of Missouri; and

(2) The place that the tort occurred is a state possession or territory of the United States, or location outside of the United States that is covered and defined in 18 U.S.C. section 2331, that has a tort victims' compensation program for which the uncompensated victim is ineligible, but which would provide at least the same compensation that the victim would have received if he or she had been injured in Missouri.

537.684. 1. A claim for compensation may be filed by a person eligible for compensation or, if the person is an incapacitated or disabled person, or a minor, by the person's spouse, parent, conservator or guardian.

2. A claim shall be filed not later than two years after the occurrence of the final award judgment upon which it is based. If there is no judgment, claims must be filed within time limits prescribed pursuant to section 516.120, RSMo, except for cases resulting in death, in which case claims must be filed within time limits prescribed pursuant to section 537.100.

3. Each claim shall be filed in person or by mail. The division of workers' compensation shall investigate such claim prior to the opening of formal proceedings. The director of the division of workers compensation shall assign an administrative law judge, associate administrative law judge or legal advisor within the

division of workers' compensation to hear any claim for compensation filed. The claimant shall be notified of the date and time of any hearing on the claim. In determining the amount of compensation for which a claimant is eligible, the division shall consider the facts stated on the application filed pursuant to section 537.678, and:

(1) Obtain a copy of the final award judgment, if any, from the appropriate court;

(2) Determine the amount of the loss to the claimant, or the victims's survivors or dependents, but any determination shall not be above that of the final award judgment awarded by the court or jury in the underlying action;

(3) Determine the degree or extent to which the victim's acts or conduct provoked, incited or contributed to the injuries or death of the victim.

4. The claimant may present evidence and testimony on his or her own behalf or may retain counsel.

5. Prior to any hearing, the person filing a claim shall submit reports, if available, from all hospitals, physicians or surgeons who treated or examined the victim for the injury for which compensation is sought. If, in the opinion of the division of workers' compensation, a report after an examination of the injured victim or a report on the cause of death of the victim would be of material aid, the division of workers' compensation may appoint a duly qualified, impartial physician to make an examination and report. A finding of the judge or jury in the underlying case shall be considered as evidence.

6. Each and every payment shall be exempt from attachment, garnishment or any other remedy available to creditors for the collection of a debt.

7. Payments of compensation shall not be made directly to any person legally incompetent to receive them but shall be made to the parent, guardian or conservator for the benefit of such minor, disabled or incapacitated person.

8. In the event that there are insufficient funds in the budget of the division of workers' compensation for payment of claims of uncompensated tort victims to pay all claims in full, claims shall be paid on a pro rata basis. If there are no funds available, then no claim shall be paid until funds have accumulated in the tort victims' compensation fund and have been appropriated to the division for payment to uncompensated tort victims. When sufficient funds become available for payment of claims of uncompensated tort victims, awards that have not been paid shall be paid in chronological order with the oldest paid first. Any award pursuant to this subsection that cannot be paid due to a lack of funds appropriated for payment of claims of uncompensated tort victims shall not constitute a claim against the state.

537.687. 1. Upon request by the division for verification of injuries of victims, medical providers shall submit the information requested by the division within twenty

working days of the request at no cost to the fund.

2. For purposes of this section, "medical providers" means physicians, dentists, clinical psychologists, optometrists, podiatrists, registered nurses, physicians' assistants, chiropractors, physical therapists, hospitals, ambulatory surgical centers and nursing homes.

3. Failure to submit the information as required by this section shall be an infraction.

537.690. 1. Any of the parties to a decision of the division of workers' compensation on a claim heard under the provisions of sections 537.675 to 537.693 may, within thirty days following the date of notification or mailing of such decision, file a petition with the labor and industrial relations commission to have the decision reviewed by the commission. The commission may allow or deny a petition for review. If a petition is allowed, the commission may affirm, reverse or set aside the decision of the division of workers' compensation on the basis of the evidence previously submitted in such case or may take additional evidence or may remand the matter to the division of workers' compensation with directions. The commission shall promptly notify the parties of its decision and the reasons therefore.

2. Any petition for review filed pursuant to subsection 1 of this section shall be deemed to be filed as of the date endorsed by the United States Postal Service on the envelope or container in which such petition is received.

3. Any party who is aggrieved by a final decision of the labor and industrial relations commission pursuant to the provisions of subsections 1 and 2 of this section may seek judicial review thereof, as provided in sections 536.100 to 536.140, RSMo. In such proceedings the attorney general, on behalf of the tort victims' compensation fund, shall defend the decision of the labor and industrial relations commission. The commission shall not be a party in such actions.

537.693. 1. Acceptance of any compensation pursuant to sections 537.675 to 537.693 shall subrogate this state, to the extent of such compensation paid, to any right or right of action accruing to the claimant or to the victim to recover payments with respect to which the compensation has been paid and to enforce the underlying judgment against the tortfeasor. The attorney general may enforce the subrogation, and he or she shall bring suit to recover from any person to whom compensation is paid, to the extent of the compensation actually paid pursuant to section 537.675 to 537.693, any amount received by the claimant from the tortfeasor or from the tortfeasor's agent exceeding the loss compensated by the state.

2. The division shall have a lien on any compensation received by the claimant from the tortfeasor or the tortfeasor's agent, in addition to compensation received pursuant to the provisions of sections 537.675 to 537.693, for injuries or death resulting

from the incident upon which the claim is based. The claimant shall retain, as trustee for the division, so much of the recovered funds as necessary to reimburse the Missouri tort victims' compensation fund to the extent that compensation was awarded to the claimant from that fund.

3. If a claimant initiates any legal proceeding to recover restitution or damages or enforce the underlying judgment related to the tort upon which the claim is based, or if the claimant enters into negotiations to receive any proceeds in settlement or a claim for restitution or damages related to the tort, the claimant shall give the division written notice within fifteen days of the filing of the action or entering into negotiations. The division may intervene in the proceeding of a complainant to recover any compensation awarded to the claimant. If a claimant fails to give such written notice to the division within the stated time period or prior to any attempt by claimant to reach a negotiated settlement of claims for recovery of damages related to the tort upon which the claim is based, the division's right of subrogation to receive or recover funds from claimant, to the extent that compensation was awarded by the division, shall not be reduced in any amount or percentage by the costs incurred by claimant attributable to such legal proceedings or settlement, including, but not limited to, attorney's fees, investigative cost or court costs.

4. Whenever the division shall deem it necessary to protect, maintain or enforce the division's right to subrogation or to exercise any of its powers to carry out any of its duties or responsibilities, the attorney general may initiate legal proceedings or intervene in legal proceedings as the division's legal representative.

5. The division may adopt rules necessary to implement the provisions of sections 537.675 to 537.693.

6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 537.675 to 537.693 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

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