

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1066
92ND GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 15, 2004, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

3580S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 537.675, 537.678, and 537.684, RSMo, and to enact in lieu thereof three new sections relating to the tort victims' compensation fund, with an emergency clause for a certain section.

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

Section A. Sections 537.675, 537.678, and 537.684, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 537.675, 537.678, and 537.684, to read as follows:

- 537.675. 1. As used in sections 537.675 through 537.693, the following terms mean:
- (1) "Annual claims", that period of time commencing on the first day of January of every year after December 31, 2002, and ending on the last day of that calendar year;
 - (2) "Commission", the labor and industrial relations commission;
 - (3) "Division", the division of workers' compensation;
 - (4) "Initial claims period", that period commencing on August 28, 2001, and ending on December 31, 2002;
 - (5) "Punitive damage final judgment", an award for punitive damages excluding interest that is no longer subject to review by courts of this state or of the United States;
 - (6) "Uncompensated tort victim", a person who:
 - (a) Is a party in a personal injury or wrongful death lawsuit; or is a tort victim whose claim against the tort-feasor has been settled for the policy limits of insurance covering the liability of such tort-feasor, **or if the tort-feasor was an uninsured motorist, the claim was settled for the policy limits of applicable uninsured motorist insurance coverage**, and such policy limits are inadequate in light of the nature and extent of damages due to the personal injury or wrongful death;

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

- (b) Unless described in paragraph (a) of this subdivision:
- a. Has obtained a final monetary judgment in that lawsuit described in paragraph (a) of this subdivision against a tort-feasor for personal injuries, or wrongful death in a case in which all appeals are final;
 - b. Has exercised due diligence in enforcing the judgment; and
 - c. Has not collected the full amount of the judgment;
 - (c) Is not a corporation, company, partnership or other incorporated or unincorporated commercial entity;
 - (d) Is not any entity claiming a right of subrogation;
 - (e) Was not on house arrest and was not confined in any federal, state, regional, county or municipal jail, prison or other correctional facility at the time he or she sustained injury from the tort-feasor;
 - (f) Has not pleaded guilty to or been found guilty of two or more felonies, where such two or more felonies occurred within ten years of the occurrence of the tort in question, and where either of such felonies involved a controlled substance or an act of violence; and
 - (g) Is a resident of the state of Missouri or sustained personal injury or death by a tort which occurred in the state of Missouri.

2. 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.

3. Any party receiving a judgment final for purposes of appeal for punitive damages in any case filed in any division of any circuit court of the state of Missouri shall notify the attorney general of the state of Missouri of such award, except for actions claiming improper health care pursuant to chapter 538, RSMo. The state of Missouri shall have a lien for deposit into the tort victims' compensation fund to the extent of fifty percent of the punitive damage final judgment which shall attach in any such case after deducting attorney's fees and expenses. 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 for collection of its share of a punitive damage final judgment. On a petition filed by the state, the court, on written notice to all interested parties, shall adjudicate the rights of the parties and enforce the lien. The lien shall not be satisfied out of any recovery until the attorney's claim for fees and expenses is paid. The state can file its lien in all cases where punitive damages are awarded upon the entry of the judgment final for purposes of appeal. The state cannot enforce its lien until there is a punitive damage final judgment. Cases resolved by arbitration, mediation or compromise settlement prior to a punitive damage final judgment are exempt from the provisions of this section. Nothing in this section 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.

4. The state of Missouri shall have no interest in or right to intervene at any stage

of any judicial proceeding pursuant to this section, except to enforce its lien rights as provided in subsection 3 of this section.

5. There is hereby established in the state treasury the "Legal Services for Low-Income People Fund", which shall consist of twenty-six percent of all payments received into the tort victims' compensation fund and all interest accruing on the principal, regardless of source or designation including twenty-six percent of the money that upon August 28, 2001, is in the tort victims' compensation fund. 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 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 solely to provide legal services to its low-income population. Funds shall be allocated 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 fund at the end of any biennium shall not be transferred to general revenue, but shall remain in the fund and be distributed in accordance with the provisions of this section. Moneys in the tort victims' compensation fund shall not be used to pay any portion of a refund mandated by article X, section 18 of the constitution.

537.678. 1. Seventy-four percent of all payments received by the tort victims' compensation fund regardless of source or designation shall, upon appropriation, be appropriated 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. Moneys in the tort victims' compensation fund shall not be used to pay any portion of a refund mandated by article X, section 18 of the constitution.

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. The requirement that the uncompensated tort victim has obtained a final judgment may be waived by the division based upon the tort-feasor's bankruptcy, inability to identify the tort-feasor or inability to obtain service of process on the tort-feasor after making a good faith effort to do so or the claim against tort-feasor has been settled for the insurance policy limits available to cover the liability of such tort-feasor, **or if the tort-feasor was an uninsured motorist, the claim has been settled for the policy limits of applicable uninsured motorist insurance coverage**, and such policy limits are inadequate in light of the injury suffered by the tort victim. The division is not

required to award 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 net 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. The division shall furnish an application form which shall include:

(1) The name and address of the uncompensated tort victim;

(2) If the claimant is not the uncompensated tort 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 tort-feasor, including the judgment amount specifying medical costs, if available. If no final judgment was obtained and the claimant is requesting a waiver pursuant to subsection 2 of this section, the application shall include a statement establishing the basis for a waiver;

(5) The nature and extent of the 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 claimant authorizing any reports, documents and other information relating to the matters specified pursuant to this section to be obtained by 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, without prejudice to refile of another application for the same matter, the claim of the claimant for failure to file the additional information or materials within the

specified time. Extensions of time to file such additional information shall be freely granted.

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.

8. Any notice required pursuant to sections 537.675 to 537.693, with the exception of the lien notice required by subsection 3 of section 537.675, shall be sent by first class mail, postage prepaid, to the party's last known address or to the last known address of the party's attorney or other legal representative.

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 judgment upon which it is based becomes final and all appeals are final, except with regard to the initial claims period. 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, except with regard to the initial claims period. With regard to the initial claims period, any claim may be filed that is based upon a judgment that is not expired or that is based upon a claim not reduced to judgment for a reason allowed by subsection 2 of section 537.678, and which would not be barred by the applicable statute of limitations if the tort-feasor could be served with process or had not taken bankruptcy.

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

- (1) Consider the facts stated on the application filed pursuant to section 537.678;
- (2) Obtain a copy of the final judgment, if any, from the appropriate court;
- (3) Determine the amount of the loss to the claimant, or the victim's survivors or dependents; and
- (4) If there is no final judgment, 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, an examination of the injured victim or a report on the cause of death of the victim would be of material aid, the division 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, provided however, this section shall not in any way affect the right of any attorney who represents or represented any claimant to collect any fee or expenses to which he or she is entitled.

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. Payment of all claims from the fund shall be made on the following basis, to wit:

(1) With regard to all claims that are made during the initial claims period, the division shall determine the aggregated amount of all awards made on these claims. Such determination shall be made on or before June 30, 2003. If the aggregate value of the awards does not exceed the total amount of money in the fund, then the awards shall be paid in full on or before September 30, 2003. If the aggregate value of the awards does exceed the total amount of money in the fund, then the awards shall be paid on a pro rata basis on or before September 30, 2003;

(2) With regard to all claims that are made after the initial claims period, the division shall determine the aggregate amount of all awards made on those claims filed during an annual claims period. Such determination shall be made on or before the thirtieth day of June in the next succeeding year. If the aggregate value of the awards does not exceed the total amount of money in the fund, then the awards shall be paid in full on or before the thirtieth day of September in the next succeeding year. If the aggregate value of the awards does exceed the total amount of money in the fund, then the awards shall be paid on a pro rata basis on or before the thirtieth day of September in the next succeeding year.

9. 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 been determined but have not been paid shall be paid [in chronological order with the oldest paid first,] **on a pro rata basis on or before the thirtieth day of September in the next succeeding year** based upon the [date on] **annual claims period** in which the application was filed with the division. 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.

10. In the event there are no funds available for payment of claims, then the division may suspend all action related to **investigating claims, hearing claims**, valuing claims, and granting awards until such time as funds in excess of [one hundred] **five hundred** thousand dollars have accumulated in the tort victims' compensation fund, at which time the division shall resume its claim processing duties.

11. Once an award is paid either in full or on a pro rata basis, a claimant shall have no further cause of action to collect additional payments from the tort victims' compensation fund.

Section B. Because there is a serious need to clarify claimant eligibility for benefits prior to June 30, 2004, section 537.684 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section 537.684 of this act shall be in full force and effect upon its passage and approval.

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