

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 713**  
94TH GENERAL ASSEMBLY

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Reported from the Committee on Education, February 28, 2008, with recommendation that the Senate Committee Substitute do pass.

3511S.07C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal section 105.711, RSMo, and to enact in lieu thereof two new sections relating to education personnel.

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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Section A. Section 105.711, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 105.711 and 168.390, to read as follows: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, RSMo, or section 537.600, RSMo;

(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, RSMo;

(3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse, or other health care provider licensed to practice in Missouri under the provisions

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

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

27 (b) Any physician licensed to practice medicine in Missouri under the  
28 provisions of chapter 334, RSMo, and his professional corporation organized  
29 pursuant to chapter 356, RSMo, who is employed by or under contract with a city  
30 or county health department organized under chapter 192, RSMo, or chapter 205,  
31 RSMo, or a city health department operating under a city charter, or a combined  
32 city-county health department to provide services to patients for medical care  
33 caused by pregnancy, delivery, and child care, if such medical services are  
34 provided by the physician pursuant to the contract without compensation or the  
35 physician is paid from no other source than a governmental agency except for  
36 patient co-payments required by federal or state law or local ordinance;

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

51 (d) Any physician licensed pursuant to chapter 334, RSMo, who is  
52 affiliated with and receives no compensation from a nonprofit entity qualified as  
53 exempt from federal taxation under Section 501(c)(3) of the Internal Revenue

54 Code of 1986, as amended, which offers a free health screening in any setting or  
55 any physician, nurse, physician assistant, dental hygienist, dentist, or other  
56 health care professional licensed or registered under chapter 330, 331, 332, 334,  
57 335, 336, 337, or 338, RSMo, who provides health care services within the scope  
58 of his or her license or registration at a city or county health department  
59 organized under chapter 192, RSMo, or chapter 205, RSMo, a city health  
60 department operating under a city charter, or a combined city-county health  
61 department, or a nonprofit community health center qualified as exempt from  
62 federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as  
63 amended, if such services are restricted to primary care and preventive health  
64 services, provided that such services shall not include the performance of an  
65 abortion, and if such health services are provided by the health care professional  
66 licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338,  
67 RSMo, without compensation. MO HealthNet or Medicare payments for primary  
68 care and preventive health services provided by a health care professional  
69 licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338,  
70 RSMo, who volunteers at a free health clinic is not compensation for the purpose  
71 of this section if the total payment is assigned to the free health clinic. For the  
72 purposes of the section, "free health clinic" means a nonprofit community health  
73 center qualified as exempt from federal taxation under Section 501 (c)(3) of the  
74 Internal Revenue Code of 1987, as amended, that provides primary care and  
75 preventive health services to people without health insurance coverage for the  
76 services provided without charge. In the case of any claim or judgment that  
77 arises under this paragraph, the aggregate of payments from the state legal  
78 expense fund shall be limited to a maximum of five hundred thousand dollars, for  
79 all claims arising out of and judgments based upon the same act or acts alleged  
80 in a single cause and shall not exceed five hundred thousand dollars for any one  
81 claimant, and insurance policies purchased pursuant to the provisions of section  
82 105.721 shall be limited to five hundred thousand dollars. Liability or  
83 malpractice insurance obtained and maintained in force by or on behalf of any  
84 health care professional licensed or registered under chapter 330, 331, 332, 334,  
85 335, 336, 337, or 338, RSMo, shall not be considered available to pay that portion  
86 of a judgment or claim for which the state legal expense fund is liable under this  
87 paragraph;

88 (e) Any physician, nurse, physician assistant, dental hygienist, or dentist  
89 licensed or registered to practice medicine, nursing, or dentistry or to act as a

90 physician assistant or dental hygienist in Missouri under the provisions of  
91 chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides  
92 medical, nursing, or dental treatment within the scope of his license or  
93 registration to students of a school whether a public, private, or parochial  
94 elementary or secondary school, if such physician's treatment is restricted to  
95 primary care and preventive health services and if such medical, dental, or  
96 nursing services are provided by the physician, dentist, physician assistant,  
97 dental hygienist, or nurse without compensation. In the case of any claim or  
98 judgment that arises under this paragraph, the aggregate of payments from the  
99 state legal expense fund shall be limited to a maximum of five hundred thousand  
100 dollars, for all claims arising out of and judgments based upon the same act or  
101 acts alleged in a single cause and shall not exceed five hundred thousand dollars  
102 for any one claimant, and insurance policies purchased pursuant to the provisions  
103 of section 105.721 shall be limited to five hundred thousand dollars; or

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

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

125 (5) Any attorney licensed to practice law in the state of Missouri who

126 practices law at or through a nonprofit community social services center qualified  
127 as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue  
128 Code of 1986, as amended, or through any agency of any federal, state, or local  
129 government, if such legal practice is provided by the attorney without  
130 compensation. In the case of any claim or judgment that arises under this  
131 subdivision, the aggregate of payments from the state legal expense fund shall be  
132 limited to a maximum of five hundred thousand dollars for all claims arising out  
133 of and judgments based upon the same act or acts alleged in a single cause and  
134 shall not exceed five hundred thousand dollars for any one claimant, and  
135 insurance policies purchased pursuant to the provisions of section 105.721 shall  
136 be limited to five hundred thousand dollars; [or]

137 (6) Any social welfare board created under section 205.770, RSMo, and the  
138 members and officers thereof upon conduct of such officer or employee while  
139 acting in his or her capacity as a board member or officer, and any physician,  
140 nurse, physician assistant, dental hygienist, dentist, or other health care  
141 professional licensed or registered under chapter 330, 331, 332, 334, 335, 336,  
142 337, or 338, RSMo, who is referred to provide medical care without compensation  
143 by the board and who provides health care services within the scope of his or her  
144 license or registration as prescribed by the board; or

145 (7) **Any school district or any employee of a school district in an**  
146 **action or proceeding that involves the reporting on or discussion of**  
147 **employee job performance for the purpose of making employment**  
148 **decisions that affect the safety and welfare of any elementary and**  
149 **secondary education student or students as provided in section 168.390,**  
150 **RSMo.**

151 3. The department of health and senior services shall promulgate rules  
152 regarding contract procedures and the documentation of care provided under  
153 paragraphs (b), (c), (d), (e), and (f) of subdivision (3) of subsection 2 of this  
154 section. The limitation on payments from the state legal expense fund or any  
155 policy of insurance procured pursuant to the provisions of section 105.721,  
156 provided in subsection 7 of this section, shall not apply to any claim or judgment  
157 arising under paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection  
158 2 of this section. Any claim or judgment arising under paragraph (a), (b), (c), (d),  
159 (e), or (f) of subdivision (3) of subsection 2 of this section shall be paid by the  
160 state legal expense fund or any policy of insurance procured pursuant to section  
161 105.721, to the extent damages are allowed under sections 538.205 to 538.235,

162 RSMo. Liability or malpractice insurance obtained and maintained in force by  
163 any health care professional licensed or registered under chapter 330, 331, 332,  
164 334, 335, 336, 337, or 338, RSMo, for coverage concerning his or her private  
165 practice and assets shall not be considered available under subsection 7 of this  
166 section to pay that portion of a judgment or claim for which the state legal  
167 expense fund is liable under paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3)  
168 of subsection 2 of this section. However, a health care professional licensed or  
169 registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, may  
170 purchase liability or malpractice insurance for coverage of liability claims or  
171 judgments based upon care rendered under paragraphs (c), (d), (e), and (f) of  
172 subdivision (3) of subsection 2 of this section which exceed the amount of liability  
173 coverage provided by the state legal expense fund under those paragraphs. Even  
174 if paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this  
175 section is repealed or modified, the state legal expense fund shall be available for  
176 damages which occur while the pertinent paragraph (a), (b), (c), (d), (e), or (f) of  
177 subdivision (3) of subsection 2 of this section is in effect.

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

198 section is in effect.

199           5. All payments shall be made from the state legal expense fund by the  
200 commissioner of administration with the approval of the attorney  
201 general. Payment from the state legal expense fund of a claim or final judgment  
202 award against a health care professional licensed or registered under chapter 330,  
203 331, 332, 334, 335, 336, 337, or 338, RSMo, described in paragraph (a), (b), (c),  
204 (d), (e), or (f) of subdivision (3) of subsection 2 of this section, or against an  
205 attorney in subdivision (5) of subsection 2 of this section, shall only be made for  
206 services rendered in accordance with the conditions of such paragraphs. In the  
207 case of any claim or judgment against an officer or employee of the state or any  
208 agency of the state based upon conduct of such officer or employee arising out of  
209 and performed in connection with his or her official duties on behalf of the state  
210 or any agency of the state that would give rise to a cause of action under section  
211 537.600, RSMo, the state legal expense fund shall be liable, excluding punitive  
212 damages, for:

213           (1) Economic damages to any one claimant; and

214           (2) Up to three hundred fifty thousand dollars for noneconomic damages.

215 The state legal expense fund shall be the exclusive remedy and shall preclude any  
216 other civil actions or proceedings for money damages arising out of or relating to  
217 the same subject matter against the state officer or employee, or the officer's or  
218 employee's estate. No officer or employee of the state or any agency of the state  
219 shall be individually liable in his or her personal capacity for conduct of such  
220 officer or employee arising out of and performed in connection with his or her  
221 official duties on behalf of the state or any agency of the state. The provisions of  
222 this subsection shall not apply to any defendant who is not an officer or employee  
223 of the state or any agency of the state in any proceeding against an officer or  
224 employee of the state or any agency of the state. Nothing in this subsection shall  
225 limit the rights and remedies otherwise available to a claimant under state law  
226 or common law in proceedings where one or more defendants is not an officer or  
227 employee of the state or any agency of the state.

228           6. The limitation on awards for noneconomic damages provided for in this  
229 subsection shall be increased or decreased on an annual basis effective January  
230 first of each year in accordance with the Implicit Price Deflator for Personal  
231 Consumption Expenditures as published by the Bureau of Economic Analysis of  
232 the United States Department of Commerce. The current value of the limitation  
233 shall be calculated by the director of the department of insurance, who shall

234 furnish that value to the secretary of state, who shall publish such value in the  
235 Missouri Register as soon after each January first as practicable, but it shall  
236 otherwise be exempt from the provisions of section 536.021, RSMo.

237           7. Except as provided in subsection 3 of this section, in the case of any  
238 claim or judgment that arises under sections 537.600 and 537.610, RSMo, against  
239 the state of Missouri, or an agency of the state, the aggregate of payments from  
240 the state legal expense fund and from any policy of insurance procured pursuant  
241 to the provisions of section 105.721 shall not exceed the limits of liability as  
242 provided in sections 537.600 to 537.610, RSMo. No payment shall be made from  
243 the state legal expense fund or any policy of insurance procured with state funds  
244 pursuant to section 105.721 unless and until the benefits provided to pay the  
245 claim by any other policy of liability insurance have been exhausted.

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

249           9. Any rule or portion of a rule, as that term is defined in section 536.010,  
250 RSMo, that is promulgated under the authority delegated in sections 105.711 to  
251 105.726 shall become effective only if it has been promulgated pursuant to the  
252 provisions of chapter 536, RSMo. Nothing in this section shall be interpreted to  
253 repeal or affect the validity of any rule filed or adopted prior to August 28, 1999,  
254 if it fully complied with the provisions of chapter 536, RSMo. This section and  
255 chapter 536, RSMo, are nonseverable and if any of the powers vested with the  
256 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective  
257 date, or to disapprove and annul a rule are subsequently held unconstitutional,  
258 then the grant of rulemaking authority and any rule proposed or adopted after  
259 August 28, 1999, shall be invalid and void.

**168.390. Any of the following persons or entities that report on  
2 or discuss employee job performance for the purpose of making  
3 employment decisions that affect the safety and well-being of any  
4 elementary and secondary education student or students and that does  
5 so in good faith and without malice shall not be subject to an action for  
6 civil damages as a result thereof:**

7           **(1) Any employee of the department of elementary and secondary  
8 education in the educator certification section or whose job functions  
9 includes handling personnel information, including but not limited to  
10 information relating to the revocation or attempted revocation of**

11 **teacher certification or teacher licensure;**

12 **(2) Any employee of the department of elementary and secondary**  
13 **education involved in the hiring of personnel for the state schools for**  
14 **severely handicapped children, the Missouri school for the blind, or the**  
15 **Missouri school for the deaf;**

16 **(3) Any employee of a school district;**

17 **(4) Any school district.**

18 **No cause of action shall arise against any such person or entity**  
19 **described in this section as a result of conduct pursuant to this**  
20 **section. The defense of any such person or entities in any such action**  
21 **or proceeding shall be covered by the legal expense fund, as provided**  
22 **in section 105.711, RSMo.**

✓

Bill

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