

SECOND REGULAR SESSION

SENATE BILL NO. 713

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GIBBONS.

Pre-filed December 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

3511S.03I

AN ACT

To repeal section 105.711, RSMo, and to enact in lieu thereof two new sections relating to civil immunity for department of elementary and secondary education employees, school district employees, and school districts.

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Section A. Section 105.711, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 105.711 and 168.390, to read as follows: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 of chapter 330, 332, 334, 335, 336, 337 or 338, RSMo, who is employed by the

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

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 elementary and**
149 **secondary education students as provided in section 168.390, RSMo.**

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

167 of subsection 2 of this section. However, a health care professional licensed or
168 registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, may
169 purchase liability or malpractice insurance for coverage of liability claims or
170 judgments based upon care rendered under paragraphs (c), (d), (e), and (f) of
171 subdivision (3) of subsection 2 of this section which exceed the amount of liability
172 coverage provided by the state legal expense fund under those paragraphs. Even
173 if paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this
174 section is repealed or modified, the state legal expense fund shall be available for
175 damages which occur while the pertinent paragraph (a), (b), (c), (d), (e), or (f) of
176 subdivision (3) of subsection 2 of this section is in effect.

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

198 5. All payments shall be made from the state legal expense fund by the
199 commissioner of administration with the approval of the attorney
200 general. Payment from the state legal expense fund of a claim or final judgment
201 award against a health care professional licensed or registered under chapter 330,
202 331, 332, 334, 335, 336, 337, or 338, RSMo, described in paragraph (a), (b), (c),
203 (d), (e), or (f) of subdivision (3) of subsection 2 of this section, or against an

attorney in subdivision (5) of subsection 2 of this section, shall only be made for services rendered in accordance with the conditions of such paragraphs. In the case of any claim or judgment against an officer or employee of the state or any agency of the state based 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 that would give rise to a cause of action under section 537.600, RSMo, the state legal expense fund shall be liable, excluding punitive damages, for:

(1) Economic damages to any one claimant; and

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

The state legal expense fund shall be the exclusive remedy and shall preclude any other civil actions or proceedings for money damages arising out of or relating to the same subject matter against the state officer or employee, or the officer's or employee's estate. No officer or employee of the state or any agency of the state shall be individually liable in his or her personal capacity for 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. The provisions of this subsection shall not apply to any defendant who is not an officer or employee of the state or any agency of the state in any proceeding against an officer or employee of the state or any agency of the state. Nothing in this subsection shall limit the rights and remedies otherwise available to a claimant under state law or common law in proceedings where one or more defendants is not an officer or employee of the state or any agency of the state.

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

7. Except as provided in subsection 3 of this section, in the case of any claim or judgment that arises under sections 537.600 and 537.610, RSMo, against the state of Missouri, or an agency of the state, the aggregate of payments from the state legal expense fund and from any policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed the limits of liability as

241 provided in sections 537.600 to 537.610, RSMo. No payment shall be made from
242 the state legal expense fund or any policy of insurance procured with state funds
243 pursuant to section 105.721 unless and until the benefits provided to pay the
244 claim by any other policy of liability insurance have been exhausted.

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

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

**168.390. Any employee of the department of elementary and
2 secondary education, employee of a school district, or school district
3 that reports on or discusses employee job performance for the purpose
4 of making employment decisions that affect the safety and well-being
5 of elementary and secondary education students and that does so in
6 good faith and without malice shall not be subject to an action for civil
7 damages as a result thereof, and no cause of action shall arise against
8 such employee of the department of elementary and secondary
9 education, such employee of a school district, or such school district as
10 a result of conduct pursuant to this section. The defense of such
11 persons in any such action or proceeding shall be covered by the legal
12 expense fund, as provided in section 105.711, RSMo.**

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