

SECOND REGULAR SESSION

SENATE BILL NO. 921

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Pre-filed January 8, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4187S.011

AN ACT

To repeal section 105.711, RSMo, and to enact in lieu thereof one new section relating to coverage under the state legal expense fund for certain healthcare professionals providing services at summer camps.

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Section A. Section 105.711, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 105.711, to read as follows: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, 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 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 **or her** professional corporation
29 organized pursuant to chapter 356, RSMo, who is employed by or under contract
30 with a city or county health department organized under chapter 192, RSMo, or
31 chapter 205, RSMo, or a city health department operating under a city charter,
32 or a combined city-county health department to provide services to patients for
33 medical care caused by pregnancy, delivery, and child care, if such medical
34 services are provided by the physician pursuant to the contract without
35 compensation or the physician is paid from no other source than a governmental
36 agency except for patient co-payments required by federal or state law or local
37 ordinance;

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

52 (d) Any physician licensed pursuant to chapter 334, RSMo, who is
53 affiliated with and receives no compensation from a nonprofit entity qualified as
54 exempt from federal taxation under Section 501(c)(3) of the Internal Revenue
55 Code of 1986, as amended, which offers a free health screening in any setting or

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

89 (e) Any physician, nurse, physician assistant, dental hygienist, or dentist
90 licensed or registered to practice medicine, nursing, or dentistry or to act as a
91 physician assistant or dental hygienist in Missouri under the provisions of

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

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

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

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

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

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

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

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

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

195 5. All payments shall be made from the state legal expense fund by the
196 commissioner of administration with the approval of the attorney
197 general. Payment from the state legal expense fund of a claim or final judgment
198 award against a health care professional licensed or registered under chapter 330,
199 331, 332, 334, 335, 336, 337, or 338, RSMo, described in paragraph (a), (b), (c),

200 (d), (e), or (f) of subdivision (3) of subsection 2 of this section, or against an
201 attorney in subdivision (5) of subsection 2 of this section, shall only be made for
202 services rendered in accordance with the conditions of such paragraphs. In the
203 case of any claim or judgment against an officer or employee of the state or any
204 agency of the state based upon conduct of such officer or employee arising out of
205 and performed in connection with his or her official duties on behalf of the state
206 or any agency of the state that would give rise to a cause of action under section
207 537.600, RSMo, the state legal expense fund shall be liable, excluding punitive
208 damages, for:

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

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

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

233 7. Except as provided in subsection 3 of this section, in the case of any
234 claim or judgment that arises under sections 537.600 and 537.610, RSMo, against
235 the state of Missouri, or an agency of the state, the aggregate of payments from

236 the state legal expense fund and from any policy of insurance procured pursuant
237 to the provisions of section 105.721 shall not exceed the limits of liability as
238 provided in sections 537.600 to 537.610, RSMo. No payment shall be made from
239 the state legal expense fund or any policy of insurance procured with state funds
240 pursuant to section 105.721 unless and until the benefits provided to pay the
241 claim by any other policy of liability insurance have been exhausted.

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

245 9. Any rule or portion of a rule, as that term is defined in section 536.010,
246 RSMo, that is promulgated under the authority delegated in sections 105.711 to
247 105.726 shall become effective only if it has been promulgated pursuant to the
248 provisions of chapter 536, RSMo. Nothing in this section shall be interpreted to
249 repeal or affect the validity of any rule filed or adopted prior to August 28, 1999,
250 if it fully complied with the provisions of chapter 536, RSMo. This section and
251 chapter 536, RSMo, are nonseverable and if any of the powers vested with the
252 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective
253 date, or to disapprove and annul a rule are subsequently held unconstitutional,
254 then the grant of rulemaking authority and any rule proposed or adopted after
255 August 28, 1999, shall be invalid and void.

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