

SECOND REGULAR SESSION

SENATE BILL NO. 1055

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time March 1, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

3197S.011

AN ACT

To repeal sections 105.711, 105.716, and 105.726, RSMo, and to enact in lieu thereof three new sections relating to the state legal expense fund.

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

Section A. Sections 105.711, 105.716, and 105.726, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 105.711,
3 105.716, and 105.726, to read as follows:

105.711. 1. There is hereby created a "State Legal Expense Fund" which
2 shall consist of moneys appropriated to the fund by the general assembly and
3 moneys otherwise credited to such fund pursuant to section 105.716.

4 2. Moneys in the state legal expense fund shall be available for the
5 payment of any claim or any amount required by any final judgment rendered by
6 a court of competent jurisdiction against:

7 (1) The state of Missouri, or any agency of the state, pursuant to section
8 536.050 or 536.087, RSMo, or section 537.600, RSMo;

9 (2) Any officer or employee of the state of Missouri or any agency of the
10 state, including, without limitation, elected officials, appointees, members of state
11 boards or commissions, and members of the Missouri national guard upon conduct
12 of such officer or employee arising out of and performed in connection with his or
13 her official duties on behalf of the state, or any agency of the state, provided that
14 moneys in this fund shall not be available for payment of claims **against such**
15 **officer or employee arising out of conduct for which the officer or**
16 **employee has pleaded guilty to or been found guilty of a misdemeanor**
17 **or felony, nor shall moneys in this fund be available for payment of**
18 **claims** made under chapter 287, RSMo;

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

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

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

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

54 (d) Any physician licensed pursuant to chapter 334, RSMo, who is

55 affiliated with and receives no compensation from a nonprofit entity qualified as
56 exempt from federal taxation under Section 501(c)(3) of the Internal Revenue
57 Code of 1986, as amended, which offers a free health screening in any setting or
58 any physician, nurse, physician assistant, dental hygienist, dentist, or other
59 health care professional licensed or registered under chapter 330, 331, 332, 334,
60 335, 336, 337, or 338, RSMo, who provides health care services within the scope
61 of his or her license or registration at a city or county health department
62 organized under chapter 192, RSMo, or chapter 205, RSMo, a city health
63 department operating under a city charter, or a combined city-county health
64 department, or a nonprofit community health center qualified as exempt from
65 federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as
66 amended, if such services are restricted to primary care and preventive health
67 services, provided that such services shall not include the performance of an
68 abortion, and if such health services are provided by the health care professional
69 licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338,
70 RSMo, without compensation. MO HealthNet or Medicare payments for primary
71 care and preventive health services provided by a health care professional
72 licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338,
73 RSMo, who volunteers at a free health clinic is not compensation for the purpose
74 of this section if the total payment is assigned to the free health clinic. For the
75 purposes of the section, "free health clinic" means a nonprofit community health
76 center qualified as exempt from federal taxation under Section 501 (c)(3) of the
77 Internal Revenue Code of 1987, as amended, that provides primary care and
78 preventive health services to people without health insurance coverage for the
79 services provided without charge. In the case of any claim or judgment that
80 arises under this paragraph, the aggregate of payments from the state legal
81 expense fund shall be limited to a maximum of five hundred thousand dollars, for
82 all claims arising out of and judgments based upon the same act or acts alleged
83 in a single cause and shall not exceed five hundred thousand dollars for any one
84 claimant, and insurance policies purchased pursuant to the provisions of section
85 105.721 shall be limited to five hundred thousand dollars. Liability or
86 malpractice insurance obtained and maintained in force by or on behalf of any
87 health care professional licensed or registered under chapter 330, 331, 332, 334,
88 335, 336, 337, or 338, RSMo, shall not be considered available to pay that portion
89 of a judgment or claim for which the state legal expense fund is liable under this
90 paragraph;

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

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

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

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

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

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

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

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

196 5. All payments shall be made from the state legal expense fund by the
197 commissioner of administration with the approval of the attorney
198 general. Payment from the state legal expense fund of a claim or final judgment

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

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

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

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

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

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

105.716. 1. Any investigation, defense, negotiation, or compromise of any
2 claim covered by sections 105.711 to 105.726 shall be conducted by the attorney
3 general; provided, that in the case of any claim against the department of
4 conservation, the department of transportation or a public institution which
5 awards baccalaureate degrees, or any officer or employee of such department or
6 such institution, any investigation, defense, negotiation, or compromise of any
7 claim covered by sections 105.711 to 105.726 shall be conducted by legal counsel
8 provided by the respective entity against which the claim is made or which
9 employs the person against whom the claim is made. In the case of any payment
10 from the state legal expense fund based upon a claim or judgment against the
11 department of conservation, the department of transportation or any officer or
12 employee thereof, the department so affected shall immediately transfer to the
13 state legal expense fund from the department funds a sum equal to the amount

14 expended from the state legal expense fund on its behalf.

15 2. All persons and entities protected by the state legal expense fund shall
16 cooperate with the attorneys conducting any investigation and preparing any
17 defense under the provisions of sections 105.711 to 105.726 by assisting such
18 attorneys in all respects, including the making of settlements, the securing and
19 giving of evidence, and the attending and obtaining witness to attend hearings
20 and trials. Funds in the state legal expense fund shall not be used to pay claims
21 and judgments against those persons and entities who do not cooperate as
22 required by this subsection.

23 3. The provisions of sections 105.711 to 105.726 notwithstanding, the
24 attorney general may investigate, defend, negotiate, or compromise any claim
25 covered by sections 105.711 to 105.726 against any public institution which
26 awards baccalaureate degrees whose governing body has declared a state of
27 financial exigency.

28 4. Notwithstanding the provisions of subsection 2 of section 105.711, funds
29 in the state legal expense fund may be expended prior to the payment of any
30 claim or any final judgment to pay costs of defense, including reasonable
31 attorney's fees for retention of legal counsel, when the attorney general
32 determines that a conflict exists or particular expertise is required, and also to
33 pay for related legal expenses including medical examination fees, expert witness
34 fees, court reporter expenses, travel costs and ancillary legal expenses incurred
35 prior to the payment of a claim or any final judgment. **The reasonableness of
36 attorney's fees for retention of legal counsel shall be based on a matrix
37 developed jointly by the office of administration and the attorney
38 general's office. When legal counsel is retained due to a determination
39 of conflict with the attorney general's office, such fees shall be
40 monitored by legal counsel for the office of administration or for a
41 state agency not involved in the conflict.**

105.726. 1. Nothing in sections 105.711 to 105.726 shall be construed to
2 broaden the liability of the state of Missouri beyond the provisions of sections
3 537.600 to 537.610, RSMo, nor to abolish or waive any defense at law which
4 might otherwise be available to any agency, officer, or employee of the state of
5 Missouri. Sections 105.711 to 105.726 do not waive the sovereign immunity of the
6 state of Missouri.

7 2. The creation of the state legal expense fund and the payment therefrom
8 of such amounts as may be necessary for the benefit of any person covered

9 thereby are deemed necessary and proper public purposes for which funds of this
10 state may be expended.

11 3. Moneys in the state legal expense fund shall not be available for the
12 payment of any claim or any amount required by any final judgment rendered by
13 a court of competent jurisdiction against a board of police commissioners
14 established under chapter 84, RSMo, including the commissioners, any police
15 officer, notwithstanding sections 84.330 and 84.710, RSMo, or other provisions of
16 law, other employees, agents, representative, or any other individual or entity
17 acting or purporting to act on its or their behalf. Such was the intent of the
18 general assembly in the original enactment of sections 105.711 to 105.726, and
19 it is made express by this section in light of the decision in *Wayman Smith, III,*
20 *et al. v. State of Missouri*, 152 S.W.3d 275. [Except that the commissioner of
21 administration shall reimburse from the legal expense fund any board of police
22 commissioners established under chapter 84, RSMo, for liability claims otherwise
23 eligible for payment under section 105.711 paid by such boards on an equal share
24 basis per claim up to a maximum of one million dollars per fiscal year.]

25 4. If the representation of the attorney general is requested by a board of
26 police commissioners, the attorney general shall represent, investigate, defend,
27 negotiate, or compromise [all] claims [under sections 105.711 to 105.726] for the
28 board of police commissioners, any police officer, other employees, agents,
29 representatives, or any other individual or entity acting or purporting to act on
30 their behalf. The attorney general may establish procedures by rules
31 promulgated under chapter 536, RSMo, under which claims must be referred for
32 the attorney general's representation. The attorney general and the officials of
33 the city which the police board represents shall meet and negotiate reasonable
34 expenses or charges that will fairly compensate the attorney general and the
35 office of administration for the cost of the representation of the claims under this
36 section.

37 5. Claims tendered to the attorney general promptly after the claim was
38 asserted as required by section 105.716 and prior to August 28, 2005, may be
39 investigated, defended, negotiated, or compromised by the attorney general and
40 full payments may be made from the state legal expense fund on behalf of the
41 entities and individuals described in this section as a result of the holding in
42 *Wayman Smith, III, et al. v. State of Missouri*, 152 S.W.3d 275.

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