

SENATE SUBSTITUTE  
FOR  
SENATE BILL NO. 758

AN ACT

To repeal section 105.711, RSMo, and to enact in lieu thereof one new section relating to health care professionals who are covered by the state legal expense fund.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1           Section A. Section 105.711, RSMo, is repealed and one new  
2 section enacted in lieu thereof, to be known as section 105.711,  
3 to read as follows:

4           105.711. 1. There is hereby created a "State Legal Expense  
5 Fund" which shall consist of moneys appropriated to the fund by  
6 the general assembly and moneys otherwise credited to such fund  
7 pursuant to section 105.716.

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

12           (1) The state of Missouri, or any agency of the state,  
13 pursuant to section 536.050 or 536.087 or section 537.600;

14           (2) Any officer or employee of the state of Missouri or any  
15 agency of the state, including, without limitation, elected  
16 officials, appointees, members of state boards or commissions,  
17 and members of the Missouri National Guard upon conduct of such  
18 officer or employee arising out of and performed in connection

1 with his or her official duties on behalf of the state, or any  
2 agency of the state, provided that moneys in this fund shall not  
3 be available for payment of claims made under chapter 287;

4 (3) (a) Any physician, psychiatrist, pharmacist,  
5 podiatrist, dentist, nurse, or other health care provider  
6 licensed to practice in Missouri under the provisions of chapter  
7 330, 332, 334, 335, 336, 337 or 338 who is employed by the state  
8 of Missouri or any agency of the state under formal contract to  
9 conduct disability reviews on behalf of the department of  
10 elementary and secondary education or provide services to  
11 patients or inmates of state correctional facilities on a  
12 part-time basis, and any physician, psychiatrist, pharmacist,  
13 podiatrist, dentist, nurse, or other health care provider  
14 licensed to practice in Missouri under the provisions of chapter  
15 330, 332, 334, 335, 336, 337, or 338 who is under formal contract  
16 to provide services to patients or inmates at a county jail on a  
17 part-time basis;

18 (b) Any physician licensed to practice medicine in Missouri  
19 under the provisions of chapter 334 and his professional  
20 corporation organized pursuant to chapter 356 who is employed by  
21 or under contract with a city or county health department  
22 organized under chapter 192 or chapter 205, or a city health  
23 department operating under a city charter, or a combined  
24 city-county health department to provide services to patients for  
25 medical care caused by pregnancy, delivery, and child care, if  
26 such medical services are provided by the physician pursuant to  
27 the contract without compensation or the physician is paid from  
28 no other source than a governmental agency except for patient

1 co-payments required by federal or state law or local ordinance;

2 (c) Any physician licensed to practice medicine in Missouri  
3 under the provisions of chapter 334 who is employed by or under  
4 contract with a federally funded community health center  
5 organized under Section 315, 329, 330 or 340 of the Public Health  
6 Services Act (42 U.S.C. 216, 254c) to provide services to  
7 patients for medical care caused by pregnancy, delivery, and  
8 child care, if such medical services are provided by the  
9 physician pursuant to the contract or employment agreement  
10 without compensation or the physician is paid from no other  
11 source than a governmental agency or such a federally funded  
12 community health center except for patient co-payments required  
13 by federal or state law or local ordinance. In the case of any  
14 claim or judgment that arises under this paragraph, the aggregate  
15 of payments from the state legal expense fund shall be limited to  
16 a maximum of one million dollars for all claims arising out of  
17 and judgments based upon the same act or acts alleged in a single  
18 cause against any such physician, and shall not exceed one  
19 million dollars for any one claimant;

20 (d) Any physician licensed pursuant to chapter 334 who is  
21 affiliated with and receives no compensation from a nonprofit  
22 entity qualified as exempt from federal taxation under Section  
23 501(c)(3) of the Internal Revenue Code of 1986, as amended, which  
24 offers a free health screening in any setting or any physician,  
25 nurse, physician assistant, dental hygienist, dentist, or other  
26 health care professional licensed or registered under chapter  
27 330, 331, 332, 334, 335, 336, 337, or 338 who provides health  
28 care services within the scope of his or her license or

1 registration at a city or county health department organized  
2 under chapter 192 or chapter 205, a city health department  
3 operating under a city charter, or a combined city-county health  
4 department, or a nonprofit community health center qualified as  
5 exempt from federal taxation under Section 501(c) (3) of the  
6 Internal Revenue Code of 1986, as amended, excluding federally  
7 funded community health centers as specified in paragraph (c) of  
8 this subdivision, if such services are restricted to primary care  
9 and preventive health services, provided that such services shall  
10 not include the performance of an abortion, and if such health  
11 services are provided by the health care professional licensed or  
12 registered under chapter 330, 331, 332, 334, 335, 336, 337, or  
13 338 without compensation. MO HealthNet or Medicare payments for  
14 primary care and preventive health services provided by a health  
15 care professional licensed or registered under chapter 330, 331,  
16 332, 334, 335, 336, 337, or 338 who volunteers at a **[free]**  
17 community health clinic is not compensation for the purpose of  
18 this section if the total payment is assigned to the **[free]**  
19 community health clinic. For the purposes of the section,  
20 **"[free] community health clinic"** means a nonprofit community  
21 health center qualified as exempt from federal taxation under  
22 Section 501(c) (3) of the Internal Revenue Code of 1987, as  
23 amended, that provides primary care and preventive health  
24 services to people without health insurance coverage **[for the**  
25 **services provided without charge]**. In the case of any claim or  
26 judgment that arises under this paragraph, the aggregate of  
27 payments from the state legal expense fund shall be limited to a  
28 maximum of five hundred thousand dollars, for all claims arising

1 out of and judgments based upon the same act or acts alleged in a  
2 single cause and shall not exceed five hundred thousand dollars  
3 for any one claimant, and insurance policies purchased pursuant  
4 to the provisions of section 105.721 shall be limited to five  
5 hundred thousand dollars. Liability or malpractice insurance  
6 obtained and maintained in force by or on behalf of any health  
7 care professional licensed or registered under chapter 330, 331,  
8 332, 334, 335, 336, 337, or 338 shall not be considered available  
9 to pay that portion of a judgment or claim for which the state  
10 legal expense fund is liable under this paragraph;

11 (e) Any physician, nurse, physician assistant, dental  
12 hygienist, or dentist licensed or registered to practice  
13 medicine, nursing, or dentistry or to act as a physician  
14 assistant or dental hygienist in Missouri under the provisions of  
15 chapter 332, 334, or 335, or lawfully practicing, who provides  
16 medical, nursing, or dental treatment within the scope of his  
17 license or registration to students of a school whether a public,  
18 private, or parochial elementary or secondary school or summer  
19 camp, if such physician's treatment is restricted to primary care  
20 and preventive health services and if such medical, dental, or  
21 nursing services are provided by the physician, dentist,  
22 physician assistant, dental hygienist, or nurse without  
23 compensation. In the case of any claim or judgment that arises  
24 under this paragraph, the aggregate of payments from the state  
25 legal expense fund shall be limited to a maximum of five hundred  
26 thousand dollars, for all claims arising out of and judgments  
27 based upon the same act or acts alleged in a single cause and  
28 shall not exceed five hundred thousand dollars for any one

1 claimant, and insurance policies purchased pursuant to the  
2 provisions of section 105.721 shall be limited to five hundred  
3 thousand dollars; or

4 (f) Any physician licensed under chapter 334, or dentist  
5 licensed under chapter 332, providing medical care without  
6 compensation to an individual referred to his or her care by a  
7 city or county health department organized under chapter 192 or  
8 205, a city health department operating under a city charter, or  
9 a combined city-county health department, or nonprofit health  
10 center qualified as exempt from federal taxation under Section  
11 501(c) (3) of the Internal Revenue Code of 1986, as amended, or a  
12 federally funded community health center organized under Section  
13 315, 329, 330, or 340 of the Public Health Services Act, 42  
14 U.S.C. Section 216, 254c; provided that such treatment shall not  
15 include the performance of an abortion. In the case of any claim  
16 or judgment that arises under this paragraph, the aggregate of  
17 payments from the state legal expense fund shall be limited to a  
18 maximum of one million dollars for all claims arising out of and  
19 judgments based upon the same act or acts alleged in a single  
20 cause and shall not exceed one million dollars for any one  
21 claimant, and insurance policies purchased under the provisions  
22 of section 105.721 shall be limited to one million dollars.  
23 Liability or malpractice insurance obtained and maintained in  
24 force by or on behalf of any physician licensed under chapter  
25 334, or any dentist licensed under chapter 332, shall not be  
26 considered available to pay that portion of a judgment or claim  
27 for which the state legal expense fund is liable under this  
28 paragraph;

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

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

18           (6) Any social welfare board created under section 205.770  
19 and the members and officers thereof upon conduct of such officer  
20 or employee while acting in his or her capacity as a board member  
21 or officer, and any physician, nurse, physician assistant, dental  
22 hygienist, dentist, or other health care professional licensed or  
23 registered under chapter 330, 331, 332, 334, 335, 336, 337, or  
24 338 who is referred to provide medical care without compensation  
25 by the board and who provides health care services within the  
26 scope of his or her license or registration as prescribed by the  
27 board; or

28           (7) Any person who is selected or appointed by the state

1 director of revenue under subsection 2 of section 136.055 to act  
2 as an agent of the department of revenue, to the extent that such  
3 agent's actions or inactions upon which such claim or judgment is  
4 based were performed in the course of the person's official  
5 duties as an agent of the department of revenue and in the manner  
6 required by state law or department of revenue rules.

7 3. The department of health and senior services shall  
8 promulgate rules regarding contract procedures and the  
9 documentation of care provided under paragraphs (b), (c), (d),  
10 (e), and (f) of subdivision (3) of subsection 2 of this section.  
11 The limitation on payments from the state legal expense fund or  
12 any policy of insurance procured pursuant to the provisions of  
13 section 105.721, provided in subsection 7 of this section, shall  
14 not apply to any claim or judgment arising under paragraph (a),  
15 (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of  
16 this section. Any claim or judgment arising under paragraph (a),  
17 (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of  
18 this section shall be paid by the state legal expense fund or any  
19 policy of insurance procured pursuant to section 105.721, to the  
20 extent damages are allowed under sections 538.205 to 538.235.  
21 Liability or malpractice insurance obtained and maintained in  
22 force by any health care professional licensed or registered  
23 under chapter 330, 331, 332, 334, 335, 336, 337, or 338 for  
24 coverage concerning his or her private practice and assets shall  
25 not be considered available under subsection 7 of this section to  
26 pay that portion of a judgment or claim for which the state legal  
27 expense fund is liable under paragraph (a), (b), (c), (d), (e),  
28 or (f) of subdivision (3) of subsection 2 of this section.



1 However, a health care professional licensed or registered under  
2 chapter 330, 331, 332, 334, 335, 336, 337, or 338 may purchase  
3 liability or malpractice insurance for coverage of liability  
4 claims or judgments based upon care rendered under paragraphs  
5 (c), (d), (e), and (f) of subdivision (3) of subsection 2 of this  
6 section which exceed the amount of liability coverage provided by  
7 the state legal expense fund under those paragraphs. Even if  
8 paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of  
9 subsection 2 of this section is repealed or modified, the state  
10 legal expense fund shall be available for damages which occur  
11 while the pertinent paragraph (a), (b), (c), (d), (e), or (f) of  
12 subdivision (3) of subsection 2 of this section is in effect.

13 4. The attorney general shall promulgate rules regarding  
14 contract procedures and the documentation of legal practice  
15 provided under subdivision (5) of subsection 2 of this section.  
16 The limitation on payments from the state legal expense fund or  
17 any policy of insurance procured pursuant to section 105.721 as  
18 provided in subsection 7 of this section shall not apply to any  
19 claim or judgment arising under subdivision (5) of subsection 2  
20 of this section. Any claim or judgment arising under subdivision  
21 (5) of subsection 2 of this section shall be paid by the state  
22 legal expense fund or any policy of insurance procured pursuant  
23 to section 105.721 to the extent damages are allowed under  
24 sections 538.205 to 538.235. Liability or malpractice insurance  
25 otherwise obtained and maintained in force shall not be  
26 considered available under subsection 7 of this section to pay  
27 that portion of a judgment or claim for which the state legal  
28 expense fund is liable under subdivision (5) of subsection 2 of

1 this section. However, an attorney may obtain liability or  
2 malpractice insurance for coverage of liability claims or  
3 judgments based upon legal practice rendered under subdivision  
4 (5) of subsection 2 of this section that exceed the amount of  
5 liability coverage provided by the state legal expense fund under  
6 subdivision (5) of subsection 2 of this section. Even if  
7 subdivision (5) of subsection 2 of this section is repealed or  
8 amended, the state legal expense fund shall be available for  
9 damages that occur while the pertinent subdivision (5) of  
10 subsection 2 of this section is in effect.

11 5. All payments shall be made from the state legal expense  
12 fund by the commissioner of administration with the approval of  
13 the attorney general. Payment from the state legal expense fund  
14 of a claim or final judgment award against a health care  
15 professional licensed or registered under chapter 330, 331, 332,  
16 334, 335, 336, 337, or 338, described in paragraph (a), (b), (c),  
17 (d), (e), or (f) of subdivision (3) of subsection 2 of this  
18 section, or against an attorney in subdivision (5) of subsection  
19 2 of this section, shall only be made for services rendered in  
20 accordance with the conditions of such paragraphs. In the case  
21 of any claim or judgment against an officer or employee of the  
22 state or any agency of the state based upon conduct of such  
23 officer or employee arising out of and performed in connection  
24 with his or her official duties on behalf of the state or any  
25 agency of the state that would give rise to a cause of action  
26 under section 537.600, the state legal expense fund shall be  
27 liable, excluding punitive damages, for:

- 28 (1) Economic damages to any one claimant; and

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

3 The state legal expense fund shall be the exclusive remedy and  
4 shall preclude any other civil actions or proceedings for money  
5 damages arising out of or relating to the same subject matter  
6 against the state officer or employee, or the officer's or  
7 employee's estate. No officer or employee of the state or any  
8 agency of the state shall be individually liable in his or her  
9 personal capacity for conduct of such officer or employee arising  
10 out of and performed in connection with his or her official  
11 duties on behalf of the state or any agency of the state. The  
12 provisions of this subsection shall not apply to any defendant  
13 who is not an officer or employee of the state or any agency of  
14 the state in any proceeding against an officer or employee of the  
15 state or any agency of the state. Nothing in this subsection  
16 shall limit the rights and remedies otherwise available to a  
17 claimant under state law or common law in proceedings where one  
18 or more defendants is not an officer or employee of the state or  
19 any agency of the state.

20           6. The limitation on awards for noneconomic damages  
21 provided for in this subsection shall be increased or decreased  
22 on an annual basis effective January first of each year in  
23 accordance with the Implicit Price Deflator for Personal  
24 Consumption Expenditures as published by the Bureau of Economic  
25 Analysis of the United States Department of Commerce. The  
26 current value of the limitation shall be calculated by the  
27 director of the department of insurance, financial institutions  
28 and professional registration, who shall furnish that value to

1 the secretary of state, who shall publish such value in the  
2 Missouri Register as soon after each January first as  
3 practicable, but it shall otherwise be exempt from the provisions  
4 of section 536.021.

5 7. Except as provided in subsection 3 of this section, in  
6 the case of any claim or judgment that arises under sections  
7 537.600 and 537.610 against the state of Missouri, or an agency  
8 of the state, the aggregate of payments from the state legal  
9 expense fund and from any policy of insurance procured pursuant  
10 to the provisions of section 105.721 shall not exceed the limits  
11 of liability as provided in sections 537.600 to 537.610. No  
12 payment shall be made from the state legal expense fund or any  
13 policy of insurance procured with state funds pursuant to section  
14 105.721 unless and until the benefits provided to pay the claim  
15 by any other policy of liability insurance have been exhausted.

16 8. The provisions of section 33.080 notwithstanding, any  
17 moneys remaining to the credit of the state legal expense fund at  
18 the end of an appropriation period shall not be transferred to  
19 general revenue.

20 9. Any rule or portion of a rule, as that term is defined  
21 in section 536.010, that is promulgated under the authority  
22 delegated in sections 105.711 to 105.726 shall become effective  
23 only if it has been promulgated pursuant to the provisions of  
24 chapter 536. Nothing in this section shall be interpreted to  
25 repeal or affect the validity of any rule filed or adopted prior  
26 to August 28, 1999, if it fully complied with the provisions of  
27 chapter 536. This section and chapter 536 are nonseverable and  
28 if any of the powers vested with the general assembly pursuant to

1 chapter 536 to review, to delay the effective date, or to  
2 disapprove and annul a rule are subsequently held  
3 unconstitutional, then the grant of rulemaking authority and any  
4 rule proposed or adopted after August 28, 1999, shall be invalid  
5 and void.