

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE FOR

# SENATE BILL NO. 758

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JUSTUS.

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TERRY L. SPIELER, Secretary.

4486S.03P

## 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.

*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Section A. Section 105.711, RSMo, is repealed and one new section  
2 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  
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 or section 537.600;

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  
12 conduct of such officer or employee arising out of and performed in connection  
13 with his or her official duties on behalf of the state, or any agency of the state,  
14 provided that moneys in this fund shall not be available for payment of claims  
15 made under chapter 287;

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

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

27           (b) Any physician licensed to practice medicine in Missouri under the  
28 provisions of chapter 334 and his professional corporation organized pursuant to  
29 chapter 356 who is employed by or under contract with a city or county health  
30 department organized under chapter 192 or chapter 205, or a city health  
31 department operating under a city charter, or a combined city-county health  
32 department to provide services to patients for medical care caused by pregnancy,  
33 delivery, and child care, if such medical services are provided by the physician  
34 pursuant to the contract without compensation or the physician is paid from no  
35 other source than a governmental agency except for patient co-payments required  
36 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 who is employed by or under contract with a federally  
39 funded community health center organized under Section 315, 329, 330 or 340 of  
40 the Public Health Services Act (42 U.S.C. 216, 254c) to provide services to  
41 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 who is affiliated with

52 and receives no compensation from a nonprofit entity qualified as exempt from  
53 federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as  
54 amended, which offers a free health screening in any setting or any physician,  
55 nurse, physician assistant, dental hygienist, dentist, or other health care  
56 professional licensed or registered under chapter 330, 331, 332, 334, 335, 336,  
57 337, or 338 who provides health care services within the scope of his or her  
58 license or registration at a city or county health department organized under  
59 chapter 192 or chapter 205, a city health department operating under a city  
60 charter, or a combined city-county health department, or a nonprofit community  
61 health center qualified as exempt from federal taxation under Section 501(c)(3)  
62 of the Internal Revenue Code of 1986, as amended, **excluding federally funded**  
63 **community health centers as specified in paragraph (c) of this**  
64 **subdivision and rural health clinics under 42 U.S.C. 1396d(l)(1)**, if such  
65 services are restricted to primary care and preventive health services, provided  
66 that such services shall not include the performance of an abortion, and if such  
67 health services are provided by the health care professional licensed or registered  
68 under chapter 330, 331, 332, 334, 335, 336, 337, or 338 without  
69 compensation. MO HealthNet or Medicare payments for primary care and  
70 preventive health services provided by a health care professional licensed or  
71 registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338 who volunteers  
72 at a [free] **community** health clinic is not compensation for the purpose of this  
73 section if the total payment is assigned to the [free] **community** health  
74 clinic. For the purposes of the section, "[free] **community** health clinic" means  
75 a nonprofit community health center qualified as exempt from federal taxation  
76 under Section 501(c)(3) of the Internal Revenue Code of 1987, as amended, that  
77 provides primary care and preventive health services to people without health  
78 insurance coverage [for the services provided without charge]. In the case of any  
79 claim or judgment that arises under this paragraph, the aggregate of payments  
80 from the state legal expense fund shall be limited to a maximum of five hundred  
81 thousand dollars, for all claims arising out of and judgments based upon the same  
82 act or acts alleged in a single cause and shall not exceed five hundred thousand  
83 dollars for any one claimant, and insurance policies purchased pursuant to the  
84 provisions of section 105.721 shall be limited to five hundred thousand  
85 dollars. Liability or malpractice insurance obtained and maintained in force by  
86 or on behalf of any health care professional licensed or registered under chapter  
87 330, 331, 332, 334, 335, 336, 337, or 338 shall not be considered available to pay

88 that portion of a judgment or claim for which the state legal expense fund is  
89 liable under this paragraph;

90 (e) Any physician, nurse, physician assistant, dental hygienist, or dentist  
91 licensed or registered to practice medicine, nursing, or dentistry or to act as a  
92 physician assistant or dental hygienist in Missouri under the provisions of  
93 chapter 332, 334, or 335, or lawfully practicing, who provides medical, nursing,  
94 or dental treatment within the scope of his license or registration to students of  
95 a school whether a public, private, or parochial elementary or secondary school  
96 or 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, or dentist licensed under  
107 chapter 332, providing medical care without compensation to an individual  
108 referred to his or her care by a city or county health department organized under  
109 chapter 192 or 205, a city health department operating under a city charter, or  
110 a combined city-county health department, or nonprofit health center qualified  
111 as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue  
112 Code of 1986, as amended, or a federally funded community health center  
113 organized under Section 315, 329, 330, or 340 of the Public Health Services Act,  
114 42 U.S.C. Section 216, 254c; provided that such treatment shall not include the  
115 performance of an abortion. In the case of any claim or judgment that arises  
116 under this paragraph, the aggregate of payments from the state legal expense  
117 fund shall be limited to a maximum of one million dollars for all claims arising  
118 out of and judgments based upon the same act or acts alleged in a single cause  
119 and shall not exceed one million dollars for any one claimant, and insurance  
120 policies purchased under the provisions of section 105.721 shall be limited to one  
121 million dollars. Liability or malpractice insurance obtained and maintained in  
122 force by or on behalf of any physician licensed under chapter 334, or any dentist  
123 licensed under chapter 332, shall not be considered available to pay that portion

124 of a judgment or claim for which the state legal expense fund is liable under this  
125 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;

139 (6) Any social welfare board created under section 205.770 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 who is referred to provide medical care without compensation by the  
145 board and who provides health care services within the scope of his or her license  
146 or registration as prescribed by the board; or

147 (7) Any person who is selected or appointed by the state director of  
148 revenue under subsection 2 of section 136.055 to act as an agent of the  
149 department of revenue, to the extent that such agent's actions or inactions upon  
150 which such claim or judgment is based were performed in the course of the  
151 person's official duties as an agent of the department of revenue and in the  
152 manner required by state law or department of revenue rules.

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

160 2 of this section. Any claim or judgment arising under paragraph (a), (b), (c), (d),  
161 (e), or (f) of subdivision (3) of subsection 2 of this section shall be paid by the  
162 state legal expense fund or any policy of insurance procured pursuant to section  
163 105.721, to the extent damages are allowed under sections 538.205 to  
164 538.235. Liability or malpractice insurance obtained and maintained in force by  
165 any health care professional licensed or registered under chapter 330, 331, 332,  
166 334, 335, 336, 337, or 338 for coverage concerning his or her private practice and  
167 assets shall not be considered available under subsection 7 of this section to pay  
168 that portion of a judgment or claim for which the state legal expense fund is  
169 liable under paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection  
170 2 of this section. However, a health care professional licensed or registered under  
171 chapter 330, 331, 332, 334, 335, 336, 337, or 338 may purchase liability or  
172 malpractice insurance for coverage of liability claims or judgments based upon  
173 care rendered under paragraphs (c), (d), (e), and (f) of subdivision (3) of subsection  
174 2 of this section which exceed the amount of liability coverage provided by the  
175 state legal expense fund under those paragraphs. Even if paragraph (a), (b), (c),  
176 (d), (e), or (f) of subdivision (3) of subsection 2 of this section is repealed or  
177 modified, the state legal expense fund shall be available for damages which occur  
178 while the pertinent paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of  
179 subsection 2 of this section is in effect.

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

196 liability coverage provided by the state legal expense fund under subdivision (5)  
197 of subsection 2 of this section. Even if subdivision (5) of subsection 2 of this  
198 section is repealed or amended, the state legal expense fund shall be available for  
199 damages that occur while the pertinent subdivision (5) of subsection 2 of this  
200 section is in effect.

201         5. All payments shall be made from the state legal expense fund by the  
202 commissioner of administration with the approval of the attorney  
203 general. Payment from the state legal expense fund of a claim or final judgment  
204 award against a health care professional licensed or registered under chapter 330,  
205 331, 332, 334, 335, 336, 337, or 338, described in paragraph (a), (b), (c), (d), (e),  
206 or (f) of subdivision (3) of subsection 2 of this section, or against an attorney in  
207 subdivision (5) of subsection 2 of this section, shall only be made for services  
208 rendered in accordance with the conditions of such paragraphs. In the case of  
209 any claim or judgment against an officer or employee of the state or any agency  
210 of the state based upon conduct of such officer or employee arising out of and  
211 performed in connection with his or her official duties on behalf of the state or  
212 any agency of the state that would give rise to a cause of action under section  
213 537.600, the state legal expense fund shall be liable, excluding punitive damages,  
214 for:

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

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

230         6. The limitation on awards for noneconomic damages provided for in this  
231 subsection shall be increased or decreased on an annual basis effective January

232 first of each year in accordance with the Implicit Price Deflator for Personal  
233 Consumption Expenditures as published by the Bureau of Economic Analysis of  
234 the United States Department of Commerce. The current value of the limitation  
235 shall be calculated by the director of the department of insurance, financial  
236 institutions and professional registration, who shall furnish that value to the  
237 secretary of state, who shall publish such value in the Missouri Register as soon  
238 after each January first as practicable, but it shall otherwise be exempt from the  
239 provisions of section 536.021.

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

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

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

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