

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 295 & 46

90TH GENERAL ASSEMBLY

Reported from the Committee on Judiciary, January 28, 1999, with recommendation that the Senate Committee Substitute do pass.

S1291.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 537.610, 537.705 and 537.756, RSMo 1994, and section 105.711, RSMo Supp. 1998, relating to sovereign immunity, and to enact in lieu thereof four new sections relating to the same subject, with an emergency clause.

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

Section A. Section 537.610, 537.705 and 537.756, RSMo 1994, and section 105.711, RSMo Supp. 1998, are repealed and four new sections enacted in lieu thereof, to be known as sections 105.711, 537.610, 537.705 and 537.756, to read as follows: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 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; or

- (3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse or other health

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

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 disability reviews on behalf of the department of elementary and secondary education or provide services to patients or inmates of state correctional facilities on a part-time basis;

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

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

(d) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or registered pursuant to chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides medical, dental or nursing treatment within the scope of his license or registration at a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, a city health department operating under a city charter, or a combined city-county health department, or a nonprofit community health center qualified as exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if such treatment is restricted to primary care and preventive health services, provided that such treatment shall not include the performance of an abortion, and if such medical, dental or nursing services are provided by the physician, dentist, physician assistant, dental hygienist or nurse without compensation. In the case of any claim or judgment that arises under this paragraph, the

aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars; or

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

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

3. The department of health shall promulgate rules regarding contract procedures and the documentation of care provided under paragraphs (b), (c), (d), and (e) of subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to the provisions of section 105.721, provided in subsection 5 of this section, shall not apply to any claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. Any claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured pursuant to section 105.721, to the extent damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance obtained and maintained in force by any physician, dentist, physician assistant, dental hygienist, or nurse for coverage concerning his or her private practice and assets shall not be considered available under subsection 5 of this section to pay that portion of a judgment or claim for which the state legal expense fund is liable under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. However, a physician, nurse, dentist, physician assistant, or dental hygienist may purchase liability or malpractice insurance for coverage of liability claims or judgments based upon care rendered under paragraphs (c), (d), and (e) of subdivision (3) of subsection 2 of this section which exceed the amount of liability coverage provided by the state legal expense fund under those paragraphs. Even if paragraph (a), (b), (c),

(d), or (e) of subdivision (3) of subsection 2 of this section is repealed or modified, the state legal expense fund shall be available for damages which occur while the pertinent paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is in effect.

4. All payments shall be made from the state legal expense fund by the commissioner of administration with the approval of the attorney general. Payment from the state legal expense fund of a claim or final judgment award against a physician, dentist, physician assistant, dental hygienist, or nurse described in paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section shall only be made for services rendered in accordance with the conditions of such paragraphs.

5. Except as provided in subsection 3 of this section, in the case of any claim or judgment that arises under sections 537.600 and 537.610, RSMo, against the state of Missouri, or an agency of the state, the aggregate of payments from the state legal expense fund and from any policy of insurance procured pursuant to the provisions of section 105.721 shall [be limited to a maximum of eight hundred thousand dollars for all claims arising out of and judgments based upon the same act or acts alleged in a single cause, and shall not exceed one hundred thousand dollars for any one claimant] **not exceed the limits of liability as provided in sections 537.600 to 537.610.** No payment shall be made from the state legal expense fund or any policy of insurance procured with state funds pursuant to section 105.721 unless and until the benefits provided to pay the claim by any other policy of liability insurance have been exhausted.

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

7. [No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.] **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in sections 105.711 to 105.726 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to the effective date of this section if it fully complied with the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section shall be invalid and void.**

537.610. 1. The commissioner of administration, through the purchasing division, and the governing body of each political subdivision of this state, notwithstanding any other provision of

law, may purchase liability insurance for tort claims, made against the state or the political subdivision, but the maximum amount of such coverage shall not exceed **[one] two** million dollars for all claims arising out of a single occurrence and shall not exceed **[one] five** hundred thousand dollars **in addition to reasonable and necessary medical expenses** for any one person in a single accident or occurrence, except for those claims governed by the provisions of the Missouri workers' compensation law, chapter 287, RSMo, and no amount in excess of the above limits shall be awarded or settled upon. Sovereign immunity for the state of Missouri and its political subdivisions is waived only to the maximum amount of and only for the purposes covered by such policy of insurance purchased pursuant to the provisions of this section and in such amount and for such purposes provided in any self-insurance plan duly adopted by the governing body of any political subdivision of the state.

2. The liability of the state and its public entities on claims within the scope of sections 537.600 to 537.650, shall not exceed **[one] two** million dollars for all claims arising out of a single accident or occurrence and shall not exceed **[one] five** hundred thousand dollars **in addition to reasonable and necessary medical expenses** for any one person in a single accident or occurrence, except for those claims governed by the provisions of the Missouri workers' compensation law, chapter 287, RSMo.

3. No award for damages on any claim against a public entity within the scope of sections 537.600 to 537.650, shall include punitive or exemplary damages.

4. If the amount awarded to or settled upon multiple claimants exceeds **[one] two** million dollars, any party may apply to any circuit court to apportion to each claimant his proper share of the total amount limited by subsection 1 of this section. The share apportioned each claimant shall be in the proportion that the ratio of the award or settlement made to him bears to the aggregate awards and settlements for all claims arising out of the accident or occurrence, but the share shall not exceed **[one] five** hundred thousand dollars.

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

6. **Any claim filed against any public entity under this section shall be subject to the penalties provided by supreme court rule 55.03.**

537.705. 1. All public entities in Missouri shall have the option of participating in the fund

and making annual contributions to the fund in the amount determined by the board in accordance with the provisions of section 379.470, RSMo, relating to rates established by insurers. Participation in the fund has the same effect as purchase of insurance by the public entity, as otherwise provided by law, and shall have the same effect as a self-insurance plan adopted by the governing body of any political subdivision of the state. Moneys in the fund shall be available for:

(1) The payment and settlement of all claims for which coverage has been obtained by any public entity in accordance with coverages offered by the board;

(2) The payment and settlement of tort claims against any officer or employee of a participating public entity **for which coverage has been obtained by any public entity in accordance with coverages offered by the board** when the claim is upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the participating public entity;

(3) Attorney's fees and expenses incurred in the settlement and defense of such entities and persons for claims specified in this subsection.

2. No amount in excess of the amount specified by section 537.756 shall be paid from the fund for the payment and settlement of claims arising out of any single occurrence.

3. The board of trustees of the fund will negotiate the settlement of and provide the defense of any claim **for which coverage has been obtained by any public entity in accordance with coverages offered by the board**. The board of trustees of the fund shall make the final determination on the settlement of any claim, or any portion of any claim, which requires payment from the fund. For any year in which any public entity does not make a yearly contribution to the fund, the board of trustees of the fund shall not be responsible, in any way, for negotiating the settlement of any claim arising from an occurrence in that year, providing any defense of any claim arising from an occurrence in that year, making any payment on any claim arising from an occurrence in that year, or making any payment on any judgment on any claim arising from an occurrence in that year. Any public entity which discontinues its participation in the fund may not resume participation for a period of three years from the date it discontinues participation.

4. All staff for the Missouri public entity risk management fund shall be provided by the office of administration except as otherwise specifically determined by the board. The fund shall reimburse the office of administration for all costs of providing staff required by this subsection. Such reimbursement shall be made on an annual basis, pursuant to contract negotiated between the fund and the office of administration. As established in section 537.700, the Missouri public entity risk management fund is a body corporate and politic, and the state of Missouri shall not be liable in any way with respect to claims made against the fund or against entities or individuals covered by the fund, nor with respect to any expense of operation of the

fund. Money in the fund is not state money nor is it money collected or received by the state.

5. Each participating public entity shall notify the board of trustees of the fund within seven working days of the time notice is received that a claim from an occurrence has been made against the entity, or one of its officers or employees. The public entity shall supply information to the board of trustees of the fund concerning any claim upon request. It shall also notify the board of trustees of the fund upon the closing of any claim.

6. The board may contract with independent insurance agents, authorizing such agents to accept contributions to the fund from public entities on behalf of the board upon such terms and conditions as the board deems necessary, and may provide a reasonable method of compensating such agents.

537.756. **1.** The maximum amount which may be paid from the fund, as defined in section 537.700, for the payment and settlement of claims arising out of any single occurrence, is [one] **two** million dollars.

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

Section B. Because of the need to clarify the law concerning the public entities covered under the Missouri public entity risk management fund, this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval.

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