

FIRST REGULAR SESSION

SENATE BILL NO. 464

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EHLMANN.

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S0015.021

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 537, RSMo, by adding thereto six new sections relating to workers' compensation.

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

Section A. Chapter 537, RSMo, is amended by adding thereto six new sections, to be known as sections 537.678, 537.681, 537.684, 537.687, 537.690 and 537.693, to read as follows:

537.678. 1. The division of workers' compensation shall, pursuant to the provisions of sections 537.678 to 537.693, have jurisdiction to determine and award compensation to, or on behalf of, uncompensated tort victims. An "uncompensated tort victim" is a prevailing plaintiff in a civil tort case that has received a final monetary judgment against a tortfeasor, but is unable to collect or enforce the judgment. The division of workers' compensation may pay compensation directly to the provider of the authorized medical or funeral expenses incurred by the claimant or the legal service organizations in Missouri which are recipients of Federal Legal Services Corporation funding which have provided legal services to the claimant. The division is not required to provide compensation, nor is it required to award the full amount claimed. The division shall make its award of compensation based upon independent verification obtained during its investigation. In no case shall the amount paid to the individual exceed the lesser of either the award granted by the court or jury, or the amount remaining in the tort victim's compensation fund.

2. Such claims shall be made by filing an application for compensation with the division of workers' compensation. The application form shall be furnished by the division and the signature shall be notarized. The application shall include:

- (1) The name and address of the uncompensated victim;**
- (2) If the claimant is not the uncompensated victim, the name and address of the**

claimant and relationship to the victim, the names and addresses of the victim's dependents, if any, and the extent to which each is so dependent;

(3) The date and nature of the tort on which the application for compensation is based;

(4) The date and court in which a judgment was rendered against the tortfeasor, including the judgment amount specifying medical costs if available;

(5) The nature and extent of the qualifying injuries sustained by the victim, the names and addresses of those giving medical and hospital treatment to the victim and whether death resulted;

(6) The loss to the claimant or a dependent resulting from the injury or death, limited to medical expenses;

(7) The amount of benefits, payments or awards, if any, payable from any source which the claimant or dependent has received or for which the claimant or dependent is eligible as a result of the injury or death;

(8) Releases authorizing the surrender to the division of reports, documents and other information relating to the matters specified under this section; and

(9) Such other information as the division determines is necessary.

3. In addition to the application, the division may require that the claimant submit materials substantiating the facts stated in the application.

4. If the division finds that an application does not contain the required information or that the facts stated therein have not been substantiated, it shall notify the claimant in writing of the specific additional items of information or materials required and that the claimant has thirty days from the date of mailing in which to furnish those items to the division. Unless a claimant requests and is granted an extension of time by the division, the division shall reject with prejudice the claim of the claimant for failure to file the additional information or materials within the specified time.

5. The claimant may file an amended application or additional substantiating materials to correct inadvertent errors or omissions at any time before the division has completed its consideration of the original application.

6. Any state or local agency, including a prosecuting attorney or law enforcement agency, shall make available without cost to the fund, all reports, files and other appropriate information which the division requests in order to make a determination that a claimant is eligible for an award pursuant to sections 537.678 to 537.693, RSMo.

7. The tort victims' compensation fund is not a state health program and is not intended to be used as a primary payor to other health care assistance programs, but is a public, quasi-charitable fund whose fundamental purpose is to assist

uncompensated tort victims through a period of financial hardship, as a payor of last resort. Accordingly, any compensation paid pursuant to sections 537.678 to 537.693 shall be reduced by the amount of any payments, benefits or awards received or to be received as a result of the injury or death:

- (1) From or on behalf of the tortfeasor;
- (2) Under private or public insurance programs, including champus, medicare, medicaid and other state or federal programs; or
- (3) From any other public or private funds, including an award payable under the workers' compensation laws of this state.

537.681. 1. The following persons shall be eligible for compensation pursuant to sections 537.678 to 537.693:

- (1) An uncompensated tort victim as defined in section 537.678;
- (2) In the case of the death of the uncompensated victim as a direct result of the tort:

- (a) A dependent of the uncompensated victim;
- (b) Any member of the family who legally assumes the obligation, or who pays the medical or burial expenses incurred as a direct result of the tort at issue.

2. An uncompensated tort victim that is found personally liable on a cross complaint of tort, or found to have been contributorily or comparatively negligent shall only be eligible to receive compensation with respect to the amount awarded by the judge or jury. No uncompensated victim or dependent shall be denied compensation solely because they are a relative of the offender or was living with the offender as a family or household member at the time of the injury or death. However, the division may award compensation to a victim or dependent who is a relative, family or household member of the offender only if the division can reasonably determine the offender will receive no substantial economic benefit or unjust enrichment from the compensation.

3. No compensation of any kind may be made to an uncompensated victim or intervenor injured while confined in any federal, state, county, or municipal jail, prison or other correctional facility, including house arrest.

4. No compensation of any kind may be made to an uncompensated victim who has been finally adjudicated and found guilty, in a criminal prosecution under the laws of this state, of two felonies within the past ten years, of which one or both involves illegal drugs or violence. The division may waive this restriction if it determines that the interest of justice would be served otherwise.

5. In the case of an uncompensated victim who is not otherwise ineligible pursuant to subsection 4 of this section, who is incarcerated as a result of a conviction of a crime not related to the incident upon which the claim is based at the time of

application, or at any time following the filing of the application:

(1) The division shall suspend all proceedings and payments until such time as the uncompensated victim is released from incarceration;

(2) The division shall notify the applicant at the time the proceedings are suspended of the right to reactivate the claim within six months of release from incarceration. The notice shall be deemed sufficient if mailed to the applicant at the applicant's last known address;

(3) The uncompensated victim may file an application to request that the case be reactivated not later than six months after the date the claimant is released from incarceration. Failure to file such request within the six-month period shall serve as a bar to any recovery.

6. Uncompensated victims of torts who are not residents of the state of Missouri may be compensated only when federal funds are available for that purpose. Compensation for nonresident victims shall terminate when federal funds for that purpose are no longer available.

7. A Missouri resident who suffers personal physical injury or, in the case of death, a dependent of the victim or any member of the family who legally assumes the obligation, or who pays the medical or burial expenses incurred as a direct result thereof, in another state, possession or territory of the United States may make application for compensation in Missouri if:

(1) The uncompensated victim would be otherwise eligible for compensation under sections 537.678 to 537.693 if the tort had occurred in the state of Missouri; and

(2) The place that the tort occurred is a state, possession or territory of the United States, or location outside of the United States that is covered and defined in 18 U.S.C. section 2331, that has a tort victims' compensation program for which the uncompensated victim is ineligible, but which would provide at least the same compensation that the victim would have received if he had been injured in Missouri.

537.684. 1. A claim for compensation may be filed by a person eligible for compensation or, if the person is an incapacitated or disabled person, or a minor, by the person's spouse, parent, conservator, or guardian.

2. A claim shall be filed not later than two years after the occurrence of the final award judgment upon which it is based.

3. Each claim shall be filed in person or by mail. The division of workers' compensation shall investigate such claim, prior to the opening of formal proceedings. The claimant shall be notified of the date and time of any hearing on such claim. In determining the amount of compensation for which a claimant is eligible, the division shall consider the facts stated on the application filed pursuant to section 537.678, and:

(1) Obtain a copy of the final award judgment from the appropriate court;
(2) Shall determine the amount of the loss to the claimant, or the victim's survivors or dependents, but such determination shall not be above that of the final award judgment awarded by the court or jury in the underlying action;

(3) Shall determine the degree or extent to which the victim's acts or conduct provoked, incited, or contributed to the injuries or death of the victim.

4. The claimant may present evidence and testimony on his own behalf or may retain counsel. The division of workers' compensation may, as part of any award entered under sections 537.678 to 537.693, determine and allow reasonable attorney's fees, which shall not exceed fifteen percent of the amount awarded as compensation under sections 537.678 to 537.693, which fee shall be paid out of, but not in addition to, the amount of compensation, to the attorney representing the claimant. No attorney for the claimant shall ask for, contract for or receive any larger sum than the amount so allowed.

5. The person filing a claim shall, prior to any hearing thereon, submit reports, if available, from all hospitals, physicians or surgeons who treated or examined the victim for the injury for which compensation is sought. If, in the opinion of the division of workers' compensation, an examination of the injured victim and a report thereon, or a report on the cause of death of the victim, would be of material aid, the division of workers' compensation may appoint a duly qualified, impartial physician to make such examination and report. A finding of the judge or jury in the underlying case as to medical expenses shall be considered as evidence.

6. Each and every payment shall be exempt from attachment, garnishment or any other remedy available to creditors for the collection of a debt.

7. Payments of compensation shall not be made directly to any person legally incompetent to receive them but shall be made to the parent, guardian or conservator for the benefit of such minor, disabled or incapacitated person.

537.687. 1. Upon request by the division for verification of injuries of victims, medical providers shall submit the information requested by the division within twenty working days of the request at no cost to the fund.

2. For purposes of this section, "medical providers" means physicians, dentists, clinical psychologists, optometrists, podiatrists, registered nurses, physician's assistants, chiropractors, physical therapists, hospitals, ambulatory surgical centers, and nursing homes.

3. Failure to submit the information as required by this section shall be an infraction.

537.690. 1. Any of the parties to a decision of the division of workers' compensation on a claim heard under the provisions of sections 537.678 to 537.693 may,

within thirty days following the date of notification or mailing of such decision, file a petition with the labor and industrial relations commission to have such decision reviewed by the commission. The commission may allow or deny a petition for review. If a petition is allowed, the commission may affirm, reverse, or set aside the decision of the division of workers' compensation on the basis of the evidence previously submitted in such case or may take additional evidence or may remand the matter to the division of workers' compensation with directions. The commission shall promptly notify the parties of its decision and the reasons therefor.

2. Any petition for review filed pursuant to subsection 1 of this section shall be deemed to be filed as of the date endorsed by the United States Postal Service on the envelope or container in which such petition is received.

3. Any party who is aggrieved by a final decision of the labor and industrial relations commission pursuant to the provisions of subsections 1 and 2 of this section may seek judicial review thereof, as provided in sections 536.100 to 536.140, RSMo.

537.693. 1. Acceptance of any compensation under sections 537.678 to 537.693 shall subrogate this state, to the extent of such compensation paid, to any right or right of action accruing to the claimant or to the victim to recover payments with respect to which the compensation has been paid and to enforce the underlying judgment against the tortfeasor. The attorney general may enforce the subrogation, and he shall bring suit to recover from any person to whom compensation is paid, to the extent of the compensation actually paid under sections 537.678 to 537.693, any amount received by the claimant from any source exceeding the loss compensated by the state.

2. The division shall have a lien on any compensation received by the claimant, in addition to compensation received under provisions of sections 537.678 to 537.693, for injuries or death resulting from the incident upon which the claim is based. The claimant shall retain, as trustee for the division, so much of the recovered funds as necessary to reimburse the Missouri tort victims' compensation fund to the extent that compensation was awarded to the claimant from that fund.

3. If a claimant initiates any legal proceeding to recover restitution or damages or enforce the underlying judgment related to the tort upon which the claim is based, or if the claimant enters into negotiations to receive any proceeds in settlement of a claim for restitution or damages related to the tort, the claimant shall give the division written notice within fifteen days of the filing of the action or entering into negotiations. The division may intervene in the proceeding of a complainant to recover the compensation awarded. If a claimant fails to give such written notice to the division within the stated time period, or prior to any attempt by claimant to reach a negotiated settlement of claims for recovery of damages related to the tort upon which the claim is based, the division's right of subrogation to receive or recover funds from

claimant, to the extent that compensation was awarded by the division, shall not be reduced in any amount or percentage by the costs incurred by claimant attributable to such legal proceedings or settlement, including, but not limited to, attorney's fees, investigative cost or cost of court. If such notice is given, attorney fees may be awarded in an amount not to exceed fifteen percent of the amount subrogated to the division.

4. Whenever the division shall deem it necessary to protect, maintain or enforce the division's right to subrogation or to exercise any of its powers or to carry out any of its duties or responsibilities, the attorney general may initiate legal proceedings or intervene in legal proceedings as the division's legal representative.

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