

FIRST REGULAR SESSION

SENATE BILL NO. 40

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WRIGHT-JONES.

Pre-filed December 1, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

0088S.011

AN ACT

To repeal section 105.711, RSMo, and to enact in lieu thereof one new section relating to state legal expense fund coverage for certain medical consultants.

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Section A. Section 105.711, RSMo, is repealed and one new section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 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 made under
15 chapter 287;

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

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

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, if such services are restricted
63 to primary care and preventive health services, provided that such services shall
64 not include the performance of an abortion, and if such health services are
65 provided by the health care professional licensed or registered under chapter 330,
66 331, 332, 334, 335, 336, 337, or 338 without compensation. MO HealthNet or
67 Medicare payments for primary care and preventive health services provided by
68 a health care professional licensed or registered under chapter 330, 331, 332, 334,
69 335, 336, 337, or 338 who volunteers at a free health clinic is not compensation
70 for the purpose of this section if the total payment is assigned to the free health
71 clinic. For the purposes of the section, "free health clinic" means a nonprofit
72 community health center qualified as exempt from federal taxation under Section
73 501 (c)(3) of the Internal Revenue Code of 1987, as amended, that provides
74 primary care and preventive health services to people without health insurance
75 coverage for the services provided without charge. In the case of any claim or
76 judgment that arises under this paragraph, the aggregate of payments from the
77 state legal expense fund shall be limited to a maximum of five hundred thousand
78 dollars, for all claims arising out of and judgments based upon the same act or
79 acts alleged in a single cause and shall not exceed five hundred thousand dollars
80 for any one claimant, and insurance policies purchased pursuant to the provisions
81 of section 105.721 shall be limited to five hundred thousand dollars. Liability or
82 malpractice insurance obtained and maintained in force by or on behalf of any
83 health care professional licensed or registered under chapter 330, 331, 332, 334,
84 335, 336, 337, or 338 shall not be considered available to pay that portion of a
85 judgment or claim for which the state legal expense fund is liable under this
86 paragraph;

87 (e) Any physician, nurse, physician assistant, dental hygienist, or dentist
88 licensed or registered to practice medicine, nursing, or dentistry or to act as a
89 physician assistant or dental hygienist in Missouri under the provisions of
90 chapter 332, 334, or 335, or lawfully practicing, who provides medical, nursing,
91 or dental treatment within the scope of his license or registration to students of

92 a school whether a public, private, or parochial elementary or secondary school
93 or summer camp, if such physician's treatment is restricted to primary care and
94 preventive health services and if such medical, dental, or nursing services are
95 provided by the physician, dentist, physician assistant, dental hygienist, or nurse
96 without compensation. In the case of any claim or judgment that arises under
97 this paragraph, the aggregate of payments from the state legal expense fund shall
98 be limited to a maximum of five hundred thousand dollars, for all claims arising
99 out of and judgments based upon the same act or acts alleged in a single cause
100 and shall not exceed five hundred thousand dollars for any one claimant, and
101 insurance policies purchased pursuant to the provisions of section 105.721 shall
102 be limited to five hundred thousand dollars; [or]

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

123 (g) Any physician, therapist, dentist, podiatrist, optometrist,
124 pharmacist, psychologist, or nurse licensed under the provisions of
125 chapters 330, 332, 334, 335, 336, 337, or 338 while acting within their
126 scope of practice, who is under contract with the department of social
127 services or any of its designated divisions to provide consultant

128 services to the MO HealthNet division or family support division for
129 claims that arise from services provided under the specified contract,
130 or who is under contract to provide consultant services to the
131 department of mental health for claims that arise from services
132 provided under the specified contract. In the case of any claim or
133 judgment that arises under this paragraph, the aggregate payments
134 from the state legal expense fund shall be limited to a maximum of five
135 hundred thousand dollars for all claims out of and judgments based
136 upon the same act or acts alleged in a single cause against any such
137 licensed professional, and shall not exceed five hundred thousand
138 dollars for any one claimant. Liability or malpractice insurance
139 obtained and maintained in force by or on behalf of the licensed
140 professionals specified in this paragraph shall not be considered
141 available to pay that portion of a judgment or claim for which the state
142 legal expense fund is liable under this paragraph;

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

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

156 (6) Any social welfare board created under section 205.770 and the
157 members and officers thereof upon conduct of such officer or employee while
158 acting in his or her capacity as a board member or officer, and any physician,
159 nurse, physician assistant, dental hygienist, dentist, or other health care
160 professional licensed or registered under chapter 330, 331, 332, 334, 335, 336,
161 337, or 338 who is referred to provide medical care without compensation by the
162 board and who provides health care services within the scope of his or her license
163 or registration as prescribed by the board.

164 3. (1) The department of health and senior services shall promulgate
165 rules regarding contract procedures and the documentation of care provided
166 under paragraphs (b), (c), (d), (e), and (f) of subdivision (3) of subsection 2 of this
167 section. The limitation on payments from the state legal expense fund or any
168 policy of insurance procured pursuant to the provisions of section 105.721,
169 provided in subsection 7 of this section, shall not apply to any claim or judgment
170 arising under paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection
171 2 of this section. Any claim or judgment arising under paragraph (a), (b), (c), (d),
172 (e), or (f) of subdivision (3) of subsection 2 of this section shall be paid by the
173 state legal expense fund or any policy of insurance procured pursuant to section
174 105.721, to the extent damages are allowed under sections 538.205 to
175 538.235. Liability or malpractice insurance obtained and maintained in force by
176 any health care professional licensed or registered under chapter 330, 331, 332,
177 334, 335, 336, 337, or 338 for coverage concerning his or her private practice and
178 assets shall not be considered available under subsection 7 of this section to pay
179 that portion of a judgment or claim for which the state legal expense fund is
180 liable under paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection
181 2 of this section. However, a health care professional licensed or registered under
182 chapter 330, 331, 332, 334, 335, 336, 337, or 338 may purchase liability or
183 malpractice insurance for coverage of liability claims or judgments based upon
184 care rendered under paragraphs (c), (d), (e), and (f) of subdivision (3) of subsection
185 2 of this section which exceed the amount of liability coverage provided by the
186 state legal expense fund under those paragraphs. Even if paragraph (a), (b), (c),
187 (d), (e), or (f) of subdivision (3) of subsection 2 of this section is repealed or
188 modified, the state legal expense fund shall be available for damages which occur
189 while the pertinent paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of
190 subsection 2 of this section is in effect;

191 **(2) The department of social services shall promulgate rules**
192 **regarding contract procedures and the documentation of services**
193 **provided under paragraph (g) of subdivision (3) of subsection 2 of this**
194 **section. The limitation on payments from the state legal expense fund**
195 **or any policy of insurance procured pursuant to section 105.721,**
196 **provided in subsection 7 of this section, shall not apply to any claim or**
197 **judgment arising pursuant to paragraph (g) of subdivision (3) of**
198 **subsection 2 of this section. Any claim or judgment arising under**
199 **paragraph (g) of subdivision (3) of subsection 2 of this section shall be**

200 **paid by the state legal expense fund or any policy of insurance**
201 **procured pursuant to section 105.721, to the extent damages are**
202 **allowed under sections 538.205 to 538.235. Liability or malpractice**
203 **insurance obtained and maintained in force by any professional**
204 **covered by paragraph (g) of subdivision (3) of subsection 2 of this**
205 **section for coverage concerning his or her private practice and assets**
206 **shall not be considered available under subsection 7 of this section to**
207 **pay that portion of a judgment or claim for which the state legal**
208 **expense fund is liable. However, such professional may purchase**
209 **liability or malpractice insurance for coverage of liability claims or**
210 **judgments based upon care rendered under paragraph (g) of**
211 **subdivision (3) of subsection 2 of this section which exceeds the amount**
212 **of liability coverage provided by the state legal expense fund under**
213 **that paragraph. Even if paragraph (g) of subdivision (3) of subsection**
214 **2 of this section is repealed or modified, the state legal expense fund**
215 **shall be available for damages which occur while such paragraph is in**
216 **effect.**

217 4. The attorney general shall promulgate rules regarding contract
218 procedures and the documentation of legal practice provided under subdivision
219 (5) of subsection 2 of this section. The limitation on payments from the state
220 legal expense fund or any policy of insurance procured pursuant to section
221 105.721 as provided in subsection 7 of this section shall not apply to any claim
222 or judgment arising under subdivision (5) of subsection 2 of this section. Any
223 claim or judgment arising under subdivision (5) of subsection 2 of this section
224 shall be paid by the state legal expense fund or any policy of insurance procured
225 pursuant to section 105.721 to the extent damages are allowed under sections
226 538.205 to 538.235. Liability or malpractice insurance otherwise obtained and
227 maintained in force shall not be considered available under subsection 7 of this
228 section to pay that portion of a judgment or claim for which the state legal
229 expense fund is liable under subdivision (5) of subsection 2 of this
230 section. However, an attorney may obtain liability or malpractice insurance for
231 coverage of liability claims or judgments based upon legal practice rendered
232 under subdivision (5) of subsection 2 of this section that exceed the amount of
233 liability coverage provided by the state legal expense fund under subdivision (5)
234 of subsection 2 of this section. Even if subdivision (5) of subsection 2 of this
235 section is repealed or amended, the state legal expense fund shall be available for

236 damages that occur while the pertinent subdivision (5) of subsection 2 of this
237 section is in effect.

238 5. All payments shall be made from the state legal expense fund by the
239 commissioner of administration with the approval of the attorney
240 general. Payment from the state legal expense fund of a claim or final judgment
241 award against a health care professional licensed or registered under chapter 330,
242 331, 332, 334, 335, 336, 337, or 338, described in paragraph (a), (b), (c), (d), (e),
243 or (f) of subdivision (3) of subsection 2 of this section, or against an attorney in
244 subdivision (5) of subsection 2 of this section, shall only be made for services
245 rendered in accordance with the conditions of such paragraphs. In the case of
246 any claim or judgment against an officer or employee of the state or any agency
247 of the state based upon conduct of such officer or employee arising out of and
248 performed in connection with his or her official duties on behalf of the state or
249 any agency of the state that would give rise to a cause of action under section
250 537.600, the state legal expense fund shall be liable, excluding punitive damages,
251 for:

252 (1) Economic damages to any one claimant; and

253 (2) Up to three hundred fifty thousand dollars for noneconomic
254 damages. The state legal expense fund shall be the exclusive remedy and shall
255 preclude any other civil actions or proceedings for money damages arising out of
256 or relating to the same subject matter against the state officer or employee, or the
257 officer's or employee's estate. No officer or employee of the state or any agency
258 of the state shall be individually liable in his or her personal capacity for conduct
259 of such officer or employee arising out of and performed in connection with his or
260 her official duties on behalf of the state or any agency of the state. The
261 provisions of this subsection shall not apply to any defendant who is not an officer
262 or employee of the state or any agency of the state in any proceeding against an
263 officer or employee of the state or any agency of the state. Nothing in this
264 subsection shall limit the rights and remedies otherwise available to a claimant
265 under state law or common law in proceedings where one or more defendants is
266 not an officer or employee of the state or any agency of the state.

267 6. The limitation on awards for noneconomic damages provided for in this
268 subsection shall be increased or decreased on an annual basis effective January
269 first of each year in accordance with the Implicit Price Deflator for Personal
270 Consumption Expenditures as published by the Bureau of Economic Analysis of
271 the United States Department of Commerce. The current value of the limitation

272 shall be calculated by the director of the department of insurance, financial
273 institutions and professional registration, who shall furnish that value to the
274 secretary of state, who shall publish such value in the Missouri Register as soon
275 after each January first as practicable, but it shall otherwise be exempt from the
276 provisions of section 536.021.

277 7. Except as provided in subsection 3 of this section, in the case of any
278 claim or judgment that arises under sections 537.600 and 537.610 against the
279 state of Missouri, or an agency of the state, the aggregate of payments from the
280 state legal expense fund and from any policy of insurance procured pursuant to
281 the provisions of section 105.721 shall not exceed the limits of liability as
282 provided in sections 537.600 to 537.610. No payment shall be made from the
283 state legal expense fund or any policy of insurance procured with state funds
284 pursuant to section 105.721 unless and until the benefits provided to pay the
285 claim by any other policy of liability insurance have been exhausted.

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

289 9. Any rule or portion of a rule, as that term is defined in section 536.010,
290 that is promulgated under the authority delegated in sections 105.711 to 105.726
291 shall become effective only if it has been promulgated pursuant to the provisions
292 of chapter 536. Nothing in this section shall be interpreted to repeal or affect the
293 validity of any rule filed or adopted prior to August 28, 1999, if it fully complied
294 with the provisions of chapter 536. This section and chapter 536 are
295 nonseverable and if any of the powers vested with the general assembly pursuant
296 to chapter 536 to review, to delay the effective date, or to disapprove and annul
297 a rule are subsequently held unconstitutional, then the grant of rulemaking
298 authority and any rule proposed or adopted after August 28, 1999, shall be
299 invalid and void.

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