

FIRST REGULAR SESSION

HOUSE BILL NO. 107

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES CLAYTON, RICHARDSON, MONACO,
HILGEMANN AND LOGRASSO (Co-sponsors).

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ANNE C. WALKER, Chief Clerk

0162L.011

AN ACT

To repeal section 537.675, RSMo 2000, relating to the tort victims' compensation fund, and to enact in lieu thereof seven new sections relating to the same subject.

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

Section A. Section 537.675, RSMo 2000, is repealed and seven new sections enacted
2 in lieu thereof, to be known as sections 537.675, 537.678, 537.681, 537.684, 537.687, 537.690
3 and 537.693, to read as follows:

537.675. 1. There is created the "Tort Victims' Compensation Fund". Unexpended
2 moneys in the fund shall not lapse at the end of the biennium as provided in section 33.080,
3 RSMo.

4 2. [Fifty percent of any final judgment awarding punitive damages after the deduction
5 of attorneys' fees and expenses shall be deemed rendered in favor of the state of Missouri. The
6 circuit clerks shall notify the attorney general of any final judgment awarding punitive damages
7 rendered in their circuits. With respect to such fifty percent, the attorney general shall collect
8 upon such judgment, and may execute or make settlements with respect thereto as he deems
9 appropriate for deposit into the fund.] **The attorney general shall be notified by the plaintiff
10 of any case in which punitive damages are sought, except for actions brought for improper
11 health care pursuant to chapter 538, RSMo. The state of Missouri shall have a lien to the
12 extent of fifty percent of punitive damages awarded by final judgment in any such case for
13 deposit in the tort victims' compensation fund, and the lien shall attach when the final
14 judgment is entered and all appeals become final. In each case, the attorney general shall**

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

15 serve a lien notice by certified mail or registered mail upon the party or parties against
16 whom the state has a claim. On petition filed by the state, the court, on written notice to
17 all interested parties, shall adjudicate the rights of the parties and enforce the charge.
18 Such charge shall not be satisfied out of any recovery until the attorney's claim for fees and
19 expenses is satisfied. This section does not apply to cases resolved by arbitration,
20 mediation or compromise settlement prior to final judgment. Nothing in this chapter shall
21 hinder or in any way affect the right or ability of the parties to any claim or lawsuit to
22 compromise or settle such claim or litigation on any terms and at any time the parties may
23 desire.

24 3. The state of Missouri shall have no interest in or right to intervene at any stage of any
25 judicial proceeding [under] **pursuant to** this section.

26 4. [No disbursement shall be made from the tort victims' compensation fund until
27 procedures for disbursement are established by further action of the general assembly.] **There**
28 **is hereby established in the state treasury the "Legal Services for Low-income People**
29 **Fund", which shall consist of thirty-five percent of all payments received by the tort**
30 **victims' compensation fund and all interest accruing on the principal regardless of source**
31 **or designation. Moneys, funds or payments paid to the credit of the legal services for low-**
32 **income people fund shall, at least as often as annually and subject to appropriation, be**
33 **distributed by the state treasurer to the legal services organizations in Missouri which are**
34 **recipients of federal Legal Services Corporation funding and shall be used for no other**
35 **purposes than as authorized by this section. The funds so distributed shall be used by each**
36 **such legal services organization in Missouri to provide legal services to its low-income**
37 **population in the manner approved by the board of directors of each legal services**
38 **organization. Funds shall be allocated in their distribution by the state treasurer according**
39 **to the most recent official census data from the Bureau of Census, United States**
40 **Department of Commerce, for people in poverty residing in Missouri. Notwithstanding the**
41 **provisions of section 33.080, RSMo, any balance remaining in the legal services for low-**
42 **income people fund shall not be transferred to general revenue, but shall remain in the**
43 **fund and be distributed in accordance with the provisions of this section.**

537.678. 1. Sixty-five percent of all payments received by the tort victims'
2 compensation fund regardless of source or designation shall, upon appropriation, be paid
3 to the division of workers' compensation for compensation to uncompensated tort victims
4 and shall be used for no other purpose. Notwithstanding the provisions of section 33.080,
5 RSMo, any balance remaining in the budget of the division of workers' compensation for
6 compensation of uncompensated tort victims shall not be transferred to general revenue
7 but shall remain in the budget of the division of workers' compensation for distribution in

8 accordance with the provisions of this section.

9 2. The division of workers' compensation shall, pursuant to the provisions of
10 sections 537.678 to 537.693, have jurisdiction to determine and award compensation to or
11 on behalf of uncompensated tort victims. An "uncompensated tort victim" is a prevailing
12 plaintiff in a personal injury or wrongful death case who has received a final monetary
13 judgment against a tortfeasor, but is unable to collect or enforce the judgment. No
14 corporation shall qualify as an uncompensated tort victim. The requirement for a final
15 judgment may be waived by the division of workers' compensation based on the
16 tortfeasor's bankruptcy or inability to identify the tortfeasor. The division is not required
17 to award compensation, nor is it required to award the full amount claimed. The division
18 shall make its award of compensation upon independent verification obtained during its
19 investigation. In no case shall the amount paid to the individual exceed the lesser of either
20 the award granted by the court or jury, or the amount remaining in the tort victims'
21 compensation fund, provided, however, that no award shall exceed three hundred
22 thousand dollars.

23 3. Claims shall be made by filing an application for compensation with the division
24 of workers' compensation. The application form shall be furnished by the division and the
25 signature of the claimant shall be notarized. The application shall include:

26 (1) The name and address of the uncompensated victim;

27 (2) If the claimant is not the uncompensated victim, the name and address of the
28 claimant and relationship to the victim, the names and addresses of all dependents of the
29 victim, if any, and the extent to which each is so dependent;

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

32 (4) The date and court in which a judgment was rendered against the tortfeasor,
33 including the judgment amount specifying medical costs, if available. If there is no final
34 judgment, the application shall include a statement of good cause for the requirement of
35 a final judgment to be waived;

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

39 (6) The loss to the claimant or a dependent resulting from the injury or death;

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

43 (8) Releases authorizing the surrender or transfer to the division of any reports,

44 documents and other information relating to the matters specified pursuant to this section;
45 and

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

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

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

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

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

63 8. Any notice required pursuant to sections 537.678 to 537.693 shall be sent by
64 ordinary mail to the party's last known address. Notice sent to a party's attorney at the
65 attorney's last known address shall meet the requirement of this subsection. The records
66 of the division of workers' compensation shall constitute prima facie evidence of the
67 mailing of any notice, determination award or other document mailed pursuant to sections
68 537.678 to 537.693.

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

3 (1) An uncompensated tort victim as defined in section 537.678;

4 (2) In the case of the death of the uncompensated victim as a direct result of the
5 tort:

6 (a) The class of persons identified in subsection 1 of section 537.080; and

7 (b) Any member of the family who legally assumes the obligation, or who pays the
8 medical or burial expenses incurred as a direct result of the tort at issue.

9 2. An uncompensated tort victim that is found personally liable on a cross-
10 complaint of tort, or found to have been contributorily or comparatively negligent, shall
11 only be eligible to receive compensation with respect to the amount awarded by the judge

12 or jury. No uncompensated victim or dependent shall be denied compensation solely
13 because the victim or dependent is a relative of the tortfeasor or was living with the
14 tortfeasor as a family or household member at the time of the injury or death. The
15 division, however, may award compensation to a victim or dependent who is a relative,
16 family or household member of the tortfeasor, if the division can reasonably determine the
17 tortfeasor will receive no substantial economic benefit or unjust enrichment from the
18 compensation.

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

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

27 5. In the case of an uncompensated victim who is not otherwise ineligible pursuant
28 to subsection 4 of this section, who is incarcerated as a result of a conviction of a crime not
29 related to the incident upon which the claim is based at the time of application, or at any
30 time following the filing of the application:

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

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

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

41 6. Uncompensated victims of torts who are not residents of the state of Missouri
42 may be compensated only when the cause of action accrued in Missouri.

43 7. A Missouri resident who suffers personal physical injury or, in the case of death,
44 the person or persons entitled to bring an action for wrongful death pursuant to section
45 537.080, may make application for compensation in Missouri if the uncompensated victim
46 would be otherwise eligible for compensation pursuant to sections 537.678 to 537.693 if the
47 tort had occurred in the state of 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. If there is no judgment, claims must be filed within time limits prescribed pursuant to section 516.120, RSMo, except for cases resulting in death, in which case claims must be filed within time limits prescribed pursuant to section 537.100.

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 director of the division of workers' compensation shall assign an administrative law judge, associate administrative law judge or legal advisor within the division of workers' compensation to hear any claim for compensation filed. The claimant shall be notified of the date and time of any hearing on the 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, if any, from the appropriate court;

(2) Determine the amount of the loss to the claimant, or the victim's survivors or dependents, but any determination shall not be above that of the final award judgment awarded by the court or jury in the underlying action; and

(3) Determine, in the absence of a final judgment, 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 or her own behalf or may retain counsel.

5. Prior to any hearing, the person filing a claim shall 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, a report after an examination of the injured victim 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 an examination and report. A finding of the judge or jury in the underlying case 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

37 the benefit of such minor, disabled or incapacitated person.

38 **8. In the event that there are insufficient funds in the budget of the division of**
39 **workers' compensation for payment of claims of uncompensated tort victims to pay all**
40 **claims in full, claims shall be paid on a pro rata basis. If there are no funds available, then**
41 **no claim shall be paid until funds have accumulated in the tort victims' compensation fund**
42 **and have been appropriated to the division for payment to uncompensated tort victims.**
43 **When sufficient funds become available for payment of claims of uncompensated tort**
44 **victims, awards that have not been paid shall be paid in chronological order with the oldest**
45 **paid first, based on the date the application was filed with the division. An award**
46 **pursuant to this subsection that cannot be paid due to a lack of funds appropriated for**
47 **payment of claims of uncompensated tort victims shall not constitute a claim against the**
48 **state.**

537.687. 1. Upon request by the division of workers' compensation for verification
2 **of injuries of victims, the claimant shall submit the information requested by the division,**
3 **and any costs incurred by the claimant for providing such information may be submitted**
4 **as part of the claim.**

5 **2. Failure to submit the information as required by this section shall be an**
6 **infraction.**

537.690. 1. Any of the parties to a decision of the division of workers' compensation
2 **on a claim heard pursuant to the provisions of sections 537.678 to 537.693 may, within**
3 **thirty days following the date of notification or mailing of such decision, file a petition with**
4 **the labor and industrial relations commission to have the decision reviewed by the**
5 **commission. The commission may allow or deny a petition for review. If a petition is**
6 **allowed, the commission may affirm, reverse or set aside the decision of the division of**
7 **workers' compensation on the basis of the evidence previously submitted in such case or**
8 **may take additional evidence or may remand the matter to the division of workers'**
9 **compensation with directions. The commission shall promptly notify the parties of its**
10 **decision and the reasons for it.**

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

14 **3. Any party who is aggrieved by a final decision of the labor and industrial**
15 **relations commission pursuant to the provisions of subsections 1 and 2 of this section may**
16 **seek judicial review of the final decision, as provided in sections 536.100 to 536.140, RSMo.**
17 **In such proceedings the attorney general, on behalf of the tort victims' compensation fund,**
18 **shall defend the decision of the labor and industrial relations commission. The commission**

19 shall not be a party in such actions.

20 **537.693. 1. Acceptance of any compensation pursuant to sections 537.678 to**
21 **537.693 shall subrogate this state, to the extent of such compensation paid, to any right or**
22 **right of action accruing to the claimant or to the victim to recover payments with respect**
23 **to which the compensation has been paid and to enforce the underlying judgment against**
24 **the tortfeasor. The attorney general may enforce the subrogation, and he or she shall bring**
25 **suit to recover from any person to whom compensation is paid, to the extent of the**
26 **compensation actually paid pursuant to sections 537.678 to 537.693, any amount received**
27 **by the claimant from the tortfeasor or from the tortfeasor's agent exceeding the loss**
28 **compensated by the state.**

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

1 **3. If a claimant initiates any legal proceeding to recover restitution or damages or**
2 **enforce the underlying judgment related to the tort upon which the claim is based, or if the**
3 **claimant enters into negotiations to receive any proceeds in settlement of a claim for**
4 **restitution or damages related to the tort, the claimant shall give the division written notice**
5 **within fifteen days of the filing of the action or entering into negotiations. The division**
6 **may intervene in the proceeding of a complainant to recover any compensation awarded**
7 **to the claimant. If a claimant fails to give such written notice to the division within the**
8 **stated time period or prior to any attempt by claimant to reach a negotiated settlement of**
9 **claims for recovery of damages related to the tort upon which the claim is based, the**
10 **division's right of subrogation to receive or recover funds from claimant, to the extent that**
11 **compensation was awarded by the division, shall not be reduced in any amount or**
12 **percentage by the costs incurred by claimant attributable to such legal proceedings or**
13 **settlement, including, but not limited to, attorney's fees, investigative costs or court costs.**

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

18 **5. The division may adopt rules necessary to implement the provisions of sections**
19 **537.678 to 537.693.**

36 **6. No rule or portion of a rule promulgated pursuant to the authority delegated in**
37 **sections 537.678 to 537.693 shall become effective unless it has been promulgated pursuant**
38 **to the provisions of chapter 536, RSMo.**