

SECOND REGULAR SESSION

HOUSE BILL NO. 1900

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCOTT.

Read 1st time February 12, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4578L.011

AN ACT

To repeal section 105.711, RSMo, and to enact in lieu thereof one new section relating to 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Section A. Section 105.711, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 105.711, to read as follows: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 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 536.050 or 536.087, RSMo, or 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] **pursuant to** chapter 287, RSMo; or

(3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse or other health care provider licensed to practice in Missouri [under] **pursuant to** the provisions of chapter 330,

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

17 332, 334, 335, 336, 337 or 338, RSMo, who is employed by the state of Missouri or any agency
18 of the state, under formal contract to conduct disability reviews on behalf of the department of
19 elementary and secondary education or provide services to patients or inmates of state
20 correctional facilities **or county jails** on a part-time basis;

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

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

43 (d) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or
44 registered pursuant to chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who
45 provides medical, dental or nursing treatment within the scope of his **or her** license or
46 registration at a city or county health department organized [under] **pursuant to** chapter 192,
47 RSMo, or chapter 205, RSMo, a city health department operating under a city charter, or a
48 combined city-county health department, or a nonprofit community health center qualified as
49 exempt from federal taxation [under] **pursuant to** Section 501(c)(3) of the Internal Revenue
50 Code of 1986, as amended, if such treatment is restricted to primary care and preventive health
51 services, provided that such treatment shall not include the performance of an abortion, and if
52 such medical, dental or nursing services are provided by the physician, dentist, physician

53 assistant, dental hygienist or nurse without compensation. In the case of any claim or judgment
54 that arises [under] **pursuant to** this paragraph, the aggregate of payments from the state legal
55 expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims
56 arising out of and judgments based upon the same act or acts alleged in a single cause and shall
57 not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased
58 pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars;
59 or

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

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

75 3. The department of health shall promulgate rules regarding contract procedures and the
76 documentation of care provided [under] **pursuant to** paragraphs (b), (c), (d), and (e) of
77 subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal
78 expense fund or any policy of insurance procured pursuant to the provisions of section 105.721,
79 provided in subsection 5 of this section, shall not apply to any claim or judgment arising [under]
80 **pursuant to** paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section.
81 Any claim or judgment arising [under] **pursuant to** paragraph (a), (b), (c), (d), or (e) of
82 subdivision (3) of subsection 2 of this section shall be paid by the state legal expense fund or any
83 policy of insurance procured pursuant to section 105.721, to the extent damages are allowed
84 [under] **pursuant to** sections 538.205 to 538.235, RSMo. Liability or malpractice insurance
85 obtained and maintained in force by any physician, dentist, physician assistant, dental hygienist,
86 or nurse for coverage concerning his or her private practice and assets shall not be considered
87 available [under] **pursuant to** subsection 5 of this section to pay that portion of a judgment or
88 claim for which the state legal expense fund is liable [under] **pursuant to** paragraph (a), (b), (c),

89 (d), or (e) of subdivision (3) of subsection 2 of this section. However, a physician, nurse, dentist,
90 physician assistant, or dental hygienist may purchase liability or malpractice insurance for
91 coverage of liability claims or judgments based upon care rendered [under] **pursuant to**
92 paragraphs (c), (d), and (e) of subdivision (3) of subsection 2 of this section which exceed the
93 amount of liability coverage provided by the state legal expense fund [under] **pursuant to** those
94 paragraphs. Even if paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this
95 section is repealed or modified, the state legal expense fund shall be available for damages which
96 occur while the pertinent paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of
97 this section is in effect.

98 4. All payments shall be made from the state legal expense fund by the commissioner
99 of administration with the approval of the attorney general. Payment from the state legal expense
100 fund of a claim or final judgment award against a physician, dentist, physician assistant, dental
101 hygienist, or nurse described in paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection
102 2 of this section shall only be made for services rendered in accordance with the conditions of
103 such paragraphs.

104 5. Except as provided in subsection 3 of this section, in the case of any claim or
105 judgment that arises [under] **pursuant to** sections 537.600 and 537.610, RSMo, against the state
106 of Missouri, or an agency of the state, the aggregate of payments from the state legal expense
107 fund and from any policy of insurance procured pursuant to the provisions of section 105.721
108 shall not exceed the limits of liability as provided in sections 537.600 to 537.610, RSMo. No
109 payment shall be made from the state legal expense fund or any policy of insurance procured
110 with state funds pursuant to section 105.721 unless and until the benefits provided to pay the
111 claim by any other policy of liability insurance have been exhausted.

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

115 7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that
116 is promulgated under the authority delegated in sections 105.711 to 105.726 shall become
117 effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo.
118 Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or
119 adopted prior to August 28, 1999, if it fully complied with the provisions of chapter 536, RSMo.
120 This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the
121 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to
122 disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking
123 authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.