

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE SUBSTITUTE FOR  
**SENATE BILL NO. 758**  
**97TH GENERAL ASSEMBLY**

4486H.04C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal section 105.711, RSMo, and to enact in lieu thereof three new sections relating to health care.

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

Section A. Section 105.711, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 105.711, 192.769, and 208.141, to read as follows: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 or section 537.600;

(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;

(3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse, or other health care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335, 336, 337 or 338 who is employed by the state of Missouri or any agency of the state under formal

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 contract to conduct disability reviews on behalf of the department of elementary and secondary  
19 education or provide services to patients or inmates of state correctional facilities on a part-time  
20 basis, and any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse, or other health care  
21 provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335, 336,  
22 337, or 338 who is under formal contract to provide services to patients or inmates at a county  
23 jail on a part-time basis;

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

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

44 (d) Any physician licensed pursuant to chapter 334 who is affiliated with and receives  
45 no compensation from a nonprofit entity qualified as exempt from federal taxation under Section  
46 501(c)(3) of the Internal Revenue Code of 1986, as amended, which offers a free health  
47 screening in any setting or any physician, nurse, physician assistant, dental hygienist, dentist, or  
48 other health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336,  
49 337, or 338 who provides health care services within the scope of his or her license or  
50 registration at a city or county health department organized under chapter 192 or chapter 205,  
51 a city health department operating under a city charter, or a combined city-county health  
52 department, or a nonprofit community health center qualified as exempt from federal taxation  
53 under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, **excluding federally**

54 **funded community health centers as specified in paragraph (c) of this subdivision and**  
55 **rural health clinics under 42 U.S.C. 1396d(l)(1)**, if such services are restricted to primary care  
56 and preventive health services, provided that such services shall not include the performance of  
57 an abortion, and if such health services are provided by the health care professional licensed or  
58 registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338 without compensation. MO  
59 HealthNet or Medicare payments for primary care and preventive health services provided by a  
60 health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337,  
61 or 338 who volunteers at a [free] **community** health clinic is not compensation for the purpose  
62 of this section if the total payment is assigned to the [free] **community** health clinic. For the  
63 purposes of the section, "[free] **community** health clinic" means a nonprofit community health  
64 center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue  
65 Code of 1987, as amended, that provides primary care and preventive health services to people  
66 without health insurance coverage [for the services provided without charge]. In the case of any  
67 claim or judgment that arises under this paragraph, the aggregate of payments from the state legal  
68 expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims  
69 arising out of and judgments based upon the same act or acts alleged in a single cause and shall  
70 not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased  
71 pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars.  
72 Liability or malpractice insurance obtained and maintained in force by or on behalf of any health  
73 care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338  
74 shall not be considered available to pay that portion of a judgment or claim for which the state  
75 legal expense fund is liable under this paragraph;

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

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

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

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

117 (6) Any social welfare board created under section 205.770 and the members and officers  
118 thereof upon conduct of such officer or employee while acting in his or her capacity as a board  
119 member or officer, and any physician, nurse, physician assistant, dental hygienist, dentist, or  
120 other health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336,  
121 337, or 338 who is referred to provide medical care without compensation by the board and who  
122 provides health care services within the scope of his or her license or registration as prescribed  
123 by the board; or

124 (7) Any person who is selected or appointed by the state director of revenue under  
125 subsection 2 of section 136.055 to act as an agent of the department of revenue, to the extent that

126 such agent's actions or inactions upon which such claim or judgment is based were performed  
127 in the course of the person's official duties as an agent of the department of revenue and in the  
128 manner required by state law or department of revenue rules.

129         3. The department of health and senior services shall promulgate rules regarding contract  
130 procedures and the documentation of care provided under paragraphs (b), (c), (d), (e), and (f) of  
131 subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal  
132 expense fund or any policy of insurance procured pursuant to the provisions of section 105.721,  
133 provided in subsection 7 of this section, shall not apply to any claim or judgment arising under  
134 paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section. Any claim  
135 or judgment arising under paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection  
136 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured  
137 pursuant to section 105.721, to the extent damages are allowed under sections 538.205 to  
138 538.235. Liability or malpractice insurance obtained and maintained in force by any health care  
139 professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338 for  
140 coverage concerning his or her private practice and assets shall not be considered available under  
141 subsection 7 of this section to pay that portion of a judgment or claim for which the state legal  
142 expense fund is liable under paragraph (a), (b), (c), (d), (e), or (f) of subdivision (3) of subsection  
143 2 of this section. However, a health care professional licensed or registered under chapter 330,  
144 331, 332, 334, 335, 336, 337, or 338 may purchase liability or malpractice insurance for coverage  
145 of liability claims or judgments based upon care rendered under paragraphs (c), (d), (e), and (f)  
146 of subdivision (3) of subsection 2 of this section which exceed the amount of liability coverage  
147 provided by the state legal expense fund under those paragraphs. Even if paragraph (a), (b), (c),  
148 (d), (e), or (f) of subdivision (3) of subsection 2 of this section is repealed or modified, the state  
149 legal expense fund shall be available for damages which occur while the pertinent paragraph (a),  
150 (b), (c), (d), (e), or (f) of subdivision (3) of subsection 2 of this section is in effect.

151         4. The attorney general shall promulgate rules regarding contract procedures and the  
152 documentation of legal practice provided under subdivision (5) of subsection 2 of this section.  
153 The limitation on payments from the state legal expense fund or any policy of insurance procured  
154 pursuant to section 105.721 as provided in subsection 7 of this section shall not apply to any  
155 claim or judgment arising under subdivision (5) of subsection 2 of this section. Any claim or  
156 judgment arising under subdivision (5) of subsection 2 of this section shall be paid by the state  
157 legal expense fund or any policy of insurance procured pursuant to section 105.721 to the extent  
158 damages are allowed under sections 538.205 to 538.235. Liability or malpractice insurance  
159 otherwise obtained and maintained in force shall not be considered available under subsection  
160 7 of this section to pay that portion of a judgment or claim for which the state legal expense fund  
161 is liable under subdivision (5) of subsection 2 of this section. However, an attorney may obtain

162 liability or malpractice insurance for coverage of liability claims or judgments based upon legal  
163 practice rendered under subdivision (5) of subsection 2 of this section that exceed the amount  
164 of liability coverage provided by the state legal expense fund under subdivision (5) of subsection  
165 2 of this section. Even if subdivision (5) of subsection 2 of this section is repealed or amended,  
166 the state legal expense fund shall be available for damages that occur while the pertinent  
167 subdivision (5) of subsection 2 of this section is in effect.

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

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

180 (2) Up to three hundred fifty thousand dollars for noneconomic damages.

181 The state legal expense fund shall be the exclusive remedy and shall preclude any other civil  
182 actions or proceedings for money damages arising out of or relating to the same subject matter  
183 against the state officer or employee, or the officer's or employee's estate. No officer or  
184 employee of the state or any agency of the state shall be individually liable in his or her personal  
185 capacity for conduct of such officer or employee arising out of and performed in connection with  
186 his or her official duties on behalf of the state or any agency of the state. The provisions of this  
187 subsection shall not apply to any defendant who is not an officer or employee of the state or any  
188 agency of the state in any proceeding against an officer or employee of the state or any agency  
189 of the state. Nothing in this subsection shall limit the rights and remedies otherwise available  
190 to a claimant under state law or common law in proceedings where one or more defendants is  
191 not an officer or employee of the state or any agency of the state.

192 6. The limitation on awards for noneconomic damages provided for in this subsection  
193 shall be increased or decreased on an annual basis effective January first of each year in  
194 accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published  
195 by the Bureau of Economic Analysis of the United States Department of Commerce. The current  
196 value of the limitation shall be calculated by the director of the department of insurance, financial  
197 institutions and professional registration, who shall furnish that value to the secretary of state,

198 who shall publish such value in the Missouri Register as soon after each January first as  
199 practicable, but it shall otherwise be exempt from the provisions of section 536.021.

200 7. Except as provided in subsection 3 of this section, in the case of any claim or  
201 judgment that arises under sections 537.600 and 537.610 against the state of Missouri, or an  
202 agency of the state, the aggregate of payments from the state legal expense fund and from any  
203 policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed the  
204 limits of liability as provided in sections 537.600 to 537.610. No payment shall be made from  
205 the state legal expense fund or any policy of insurance procured with state funds pursuant to  
206 section 105.721 unless and until the benefits provided to pay the claim by any other policy of  
207 liability insurance have been exhausted.

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

211 9. Any rule or portion of a rule, as that term is defined in section 536.010, that is  
212 promulgated under the authority delegated in sections 105.711 to 105.726 shall become effective  
213 only if it has been promulgated pursuant to the provisions of chapter 536. Nothing in this section  
214 shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28,  
215 1999, if it fully complied with the provisions of chapter 536. This section and chapter 536 are  
216 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536  
217 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held  
218 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after  
219 August 28, 1999, shall be invalid and void.

**192.769. 1. On completion of a mammogram, a mammography facility certified by  
2 the United States Food and Drug Administration (FDA) or by a certification agency  
3 approved by the FDA shall provide to the patient the following notice:**

4 **"If your mammogram demonstrates that you have dense breast tissue, which could  
5 hide abnormalities, and you have other risk factors for breast cancer that have been  
6 identified, you might benefit from supplemental screening tests that may be suggested by  
7 your ordering physician. Dense breast tissue, in and of itself, is a relatively common  
8 condition. Therefore, this information is not provided to cause undue concern, but rather  
9 to raise your awareness and to promote discussion with your physician regarding the  
10 presence of other risk factors, in addition to dense breast tissue. A report of your  
11 mammography results will be sent to you and your physician. You should contact your  
12 physician if you have any questions or concerns regarding this report."**

13 **2. Nothing in this section shall be construed to create a duty of care beyond the duty  
14 to provide notice as set forth in this section.**

15           **3. The information required by this section or evidence that a person violated this**  
16 **section is not admissible in a civil, judicial, or administrative proceeding.**

17           **4. A mammography facility is not required to comply with the requirements of this**  
18 **section until January 1, 2015.**

**208.141. 1. The department of social services shall reimburse a hospital for**  
2 **prescribed medically necessary donor human breast milk provided to a MO HealthNet**  
3 **participant if:**

4           **(1) The participant is an infant under the age of three months;**

5           **(2) The participant is critically ill;**

6           **(3) The participant is in the neonatal intensive care unit of the hospital;**

7           **(4) A physician orders the milk for the participant;**

8           **(5) The department determines that the milk is medically necessary for the**  
9 **participant;**

10           **(6) The parent or guardian signs and dates an informed consent form indicating**  
11 **the risks and benefits of using banked donor human milk; and**

12           **(7) The milk is obtained from a donor human milk bank that meets the quality**  
13 **guidelines established by the department.**

14           **2. An electronic web-based prior authorization system using the best medical**  
15 **evidence and care and treatment guidelines consistent with national standards shall be**  
16 **used to verify medical need.**

17           **3. The department shall promulgate rules for the implementation of this section,**  
18 **including setting forth rules for the required documentation by the physician and the**  
19 **informed consent to be provided to and signed by the parent or guardian of the**  
20 **participant. Any rule or portion of a rule, as that term is defined in section 536.010, that**  
21 **is created under the authority delegated in this section shall become effective only if it**  
22 **complies with and is subject to all of the provisions of chapter 536, and, if applicable,**  
23 **section 536.028. This section and chapter 536, are nonseverable, and if any of the powers**  
24 **vested with the general assembly under chapter 536, to review, to delay the effective date,**  
25 **or to disapprove and annul a rule are subsequently held unconstitutional, then the grant**  
26 **of rulemaking authority and any rule proposed or adopted after August 28, 2014, shall be**  
27 **invalid and void.**

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