

FIRST REGULAR SESSION

# SENATE BILL NO. 673

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Read 1st time March 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2568S.011

## AN ACT

To repeal sections 105.711 and 105.716, RSMo, and to enact in lieu thereof three new sections relating to public expenditures.

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

Section A. Sections 105.711 and 105.716, RSMo, are repealed and three  
2 new sections enacted in lieu thereof, to be known as sections 30.273, 105.711 and  
3 105.716, to read as follows:

**30.273. 1. The state treasurer shall authorize all expenditures by  
2 any agency of the state. Before the director of any agency of the state  
3 makes any expenditure on behalf of the agency, the director of such  
4 agency shall request certification from the treasurer's office  
5 authorizing the expenditure. The state treasurer shall authorize the  
6 expenditure if, in the opinion of the state treasurer, the expenditure  
7 lies within the scope of the agency's regular course of business and  
8 within the purposes for which moneys have been appropriated to the  
9 agency by the general assembly.**

**10 2. The state treasurer shall promulgate rules to implement the  
11 provisions of this section. Any rule or portion of a rule, as that term is  
12 defined in section 536.010, RSMo, that is created under the authority  
13 delegated in this section shall become effective only if it complies with  
14 and is subject to all of the provisions of chapter 536, RSMo, and, if  
15 applicable, section 536.028, RSMo. This section and chapter 536, RSMo,  
16 are nonseverable and if any of the powers vested with the general  
17 assembly pursuant to chapter 536, RSMo, to review, to delay the  
18 effective date, or to disapprove and annul a rule are subsequently held**

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

19 **unconstitutional, then the grant of rulemaking authority and any rule**  
20 **proposed or adopted after August 28, 2007, shall be invalid and void.**

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 **settlement agreement**  
6 **negotiated by the attorney general or designated legal counsel for such**  
7 **claim, as provided by section 105.716, and any** final judgment rendered by  
8 a court of competent jurisdiction against:

9 (1) The state of Missouri, or any agency of the state, pursuant to section  
10 536.050 or 536.087, RSMo, or section 537.600, RSMo;

11 (2) Any officer or employee of the state of Missouri or any agency of the  
12 state, including, without limitation, elected officials, appointees, members of state  
13 boards or commissions, and members of the Missouri national guard upon conduct  
14 of such officer or employee arising out of and performed in connection with his or  
15 her official duties on behalf of the state, or any agency of the state, provided that  
16 moneys in this fund shall not be available for payment of claims made under  
17 chapter 287, RSMo; or

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

29 (b) Any physician licensed to practice medicine in Missouri under the  
30 provisions of chapter 334, RSMo, and his professional corporation organized  
31 pursuant to chapter 356, RSMo, who is employed by or under contract with a city  
32 or county health department organized under chapter 192, RSMo, or chapter 205,  
33 RSMo, or a city health department operating under a city charter, or a combined  
34 city-county health department to provide services to patients for medical care

35 caused by pregnancy, delivery, and child care, if such medical services are  
36 provided by the physician pursuant to the contract without compensation or the  
37 physician is paid from no other source than a governmental agency except for  
38 patient co-payments required by federal or state law or local ordinance;

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

54 (d) Any physician licensed pursuant to chapter 334, RSMo, who is  
55 affiliated with and receives no compensation from a nonprofit entity qualified as  
56 exempt from federal taxation under Section 501(c)(3) of the Internal Revenue  
57 Code of 1986, as amended, which offers a free health screening in any setting or  
58 any physician, nurse, physician assistant, dental hygienist, or dentist licensed or  
59 registered pursuant to chapter 332, RSMo, chapter 334, RSMo, or chapter 335,  
60 RSMo, who provides medical, dental, or nursing treatment within the scope of his  
61 license or registration at a city or county health department organized under  
62 chapter 192, RSMo, or chapter 205, RSMo, a city health department operating  
63 under a city charter, or a combined city-county health department, or a nonprofit  
64 community health center qualified as exempt from federal taxation under Section  
65 501(c)(3) of the Internal Revenue Code of 1986, as amended, if such treatment is  
66 restricted to primary care and preventive health services, provided that such  
67 treatment shall not include the performance of an abortion, and if such medical,  
68 dental, or nursing services are provided by the physician, dentist, physician  
69 assistant, dental hygienist, or nurse without compensation. Medicaid or medicare  
70 payments for primary care and preventive health services provided by a

71 physician, dentist, physician assistant, dental hygienist, or nurse who volunteers  
72 at a free health clinic is not compensation for the purpose of this section if the  
73 total payment is assigned to the free health clinic. For the purposes of the  
74 section, "free health clinic" means a nonprofit community health center qualified  
75 as exempt from federal taxation under Section 501 (c)(3) of the Internal Revenue  
76 Code of 1987, as amended, that provides primary care and preventive health  
77 services to people without health insurance coverage for the services provided  
78 without charge. In the case of any claim, **settlement agreement**, or judgment  
79 that arises under this paragraph, the aggregate of payments from the state legal  
80 expense fund shall be limited to a maximum of five hundred thousand dollars, for  
81 all claims **or settlement agreements** arising out of and judgments based upon  
82 the same act or acts alleged in a single cause and shall not exceed five hundred  
83 thousand dollars for any one claimant, and insurance policies purchased pursuant  
84 to the provisions of section 105.721 shall be limited to five hundred thousand  
85 dollars. Liability or malpractice insurance obtained and maintained in force by  
86 or on behalf of any physician, dentist, physician assistant, dental hygienist, or  
87 nurse shall not be considered available to pay that portion of a judgment,  
88 **settlement agreement**, or claim for which the state legal expense fund is liable  
89 under this paragraph, **or any claim or any amount required by any**  
90 **settlement agreement or any final judgment rendered by a court of**  
91 **competent jurisdiction against; or**

92 (e) Any physician, nurse, physician assistant, dental hygienist, or dentist  
93 licensed or registered to practice medicine, nursing, or dentistry or to act as a  
94 physician assistant or dental hygienist in Missouri under the provisions of  
95 chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides  
96 medical, nursing, or dental treatment within the scope of his license or  
97 registration to students of a school whether a public, private, or parochial  
98 elementary or secondary school, if such physician's treatment is restricted to  
99 primary care and preventive health services and if such medical, dental, or  
100 nursing services are provided by the physician, dentist, physician assistant,  
101 dental hygienist, or nurse without compensation. In the case of any claim,  
102 **settlement agreement**, or judgment that arises under this paragraph, the  
103 aggregate of payments from the state legal expense fund shall be limited to a  
104 maximum of five hundred thousand dollars, for all claims **and settlement**  
105 **agreements** arising out of and judgments based upon the same act or acts  
106 alleged in a single cause and shall not exceed five hundred thousand dollars for

107 any one claimant, and insurance policies purchased pursuant to the provisions  
108 of section 105.721 shall be limited to five hundred thousand dollars; or

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

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

123 3. The department of health and senior services shall promulgate rules  
124 regarding contract procedures and the documentation of care provided under  
125 paragraphs (b), (c), (d), and (e) of subdivision (3) of subsection 2 of this  
126 section. The limitation on payments from the state legal expense fund or any  
127 policy of insurance procured pursuant to the provisions of section 105.721,  
128 provided in subsection 7 of this section, shall not apply to any claim, **settlement**  
129 **agreement**, or judgment arising under paragraph (a), (b), (c), (d), or (e) of  
130 subdivision (3) of subsection 2 of this section. Any claim, **settlement**  
131 **agreement**, or judgment arising under paragraph (a), (b), (c), (d), or (e) of  
132 subdivision (3) of subsection 2 of this section shall be paid by the state legal  
133 expense fund or any policy of insurance procured pursuant to section 105.721, to  
134 the extent damages are allowed under sections 538.205 to 538.235,  
135 RSMo. Liability or malpractice insurance obtained and maintained in force by  
136 any physician, dentist, physician assistant, dental hygienist, or nurse for coverage  
137 concerning his or her private practice and assets shall not be considered available  
138 under subsection 7 of this section to pay that portion of a judgment, **settlement**  
139 **agreement**, or claim for which the state legal expense fund is liable under  
140 paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this  
141 section. However, a physician, nurse, dentist, physician assistant, or dental  
142 hygienist may purchase liability or malpractice insurance for coverage of liability

143 claims, **settlement agreements**, or judgments based upon care rendered under  
144 paragraphs (c), (d), and (e) of subdivision (3) of subsection 2 of this section which  
145 exceed the amount of liability coverage provided by the state legal expense fund  
146 under those paragraphs. Even if paragraph (a), (b), (c), (d), or (e) of subdivision  
147 (3) of subsection 2 of this section is repealed or modified, the state legal expense  
148 fund shall be available for damages which occur while the pertinent paragraph  
149 (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is in effect.

150 4. The attorney general shall promulgate rules regarding contract  
151 procedures and the documentation of legal practice provided under subdivision  
152 (5) of subsection 2 of this section. The limitation on payments from the state  
153 legal expense fund or any policy of insurance procured pursuant to section  
154 105.721 as provided in subsection 7 of this section shall not apply to any claim,  
155 **settlement agreement**, or judgment arising under subdivision (5) of subsection  
156 2 of this section. Any claim, **settlement agreement**, or judgment arising under  
157 subdivision (5) of subsection 2 of this section shall be paid by the state legal  
158 expense fund or any policy of insurance procured pursuant to section 105.721 to  
159 the extent damages are allowed under sections 538.205 to 538.235,  
160 RSMo. Liability or malpractice insurance otherwise obtained and maintained in  
161 force shall not be considered available under subsection 7 of this section to pay  
162 that portion of a judgment, **settlement agreement**, or claim for which the state  
163 legal expense fund is liable under subdivision (5) of subsection 2 of this  
164 section. However, an attorney may obtain liability or malpractice insurance for  
165 coverage of liability claims, **settlement agreements**, or judgments based upon  
166 legal practice rendered under subdivision (5) of subsection 2 of this section that  
167 exceed the amount of liability coverage provided by the state legal expense fund  
168 under subdivision (5) of subsection 2 of this section. Even if subdivision (5) of  
169 subsection 2 of this section is repealed or amended, the state legal expense fund  
170 shall be available for damages that occur while the pertinent subdivision (5) of  
171 subsection 2 of this section is in effect.

172 5. All payments shall be made from the state legal expense fund by the  
173 commissioner of administration with the approval of the attorney  
174 general. Payment from the state legal expense fund of a claim, **settlement**  
175 **agreement**, or final judgment award against a physician, dentist, physician  
176 assistant, dental hygienist, or nurse described in paragraph (a), (b), (c), (d), or (e)  
177 of subdivision (3) of subsection 2 of this section, or against an attorney in  
178 subdivision (5) of subsection 2 of this section, shall only be made for services

179 rendered in accordance with the conditions of such paragraphs. In the case of  
180 any claim, **settlement agreement**, or judgment against an officer or employee  
181 of the state or any agency of the state based upon conduct of such officer or  
182 employee arising out of and performed in connection with his or her official duties  
183 on behalf of the state or any agency of the state that would give rise to a cause  
184 of action under section 537.600, RSMo, the state legal expense fund shall be  
185 liable, excluding punitive damages, for:

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

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

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

201 6. The limitation on awards for noneconomic damages provided for in this  
202 subsection shall be increased or decreased on an annual basis effective January  
203 first of each year in accordance with the Implicit Price Deflator for Personal  
204 Consumption Expenditures as published by the Bureau of Economic Analysis of  
205 the United States Department of Commerce. The current value of the limitation  
206 shall be calculated by the director of the department of insurance, who shall  
207 furnish that value to the secretary of state, who shall publish such value in the  
208 Missouri Register as soon after each January first as practicable, but it shall  
209 otherwise be exempt from the provisions of section 536.021, RSMo.

210 7. Except as provided in subsection 3 of this section, in the case of any  
211 claim, **settlement agreement**, or judgment that arises under sections 537.600  
212 and 537.610, RSMo, against the state of Missouri, or an agency of the state, the  
213 aggregate of payments from the state legal expense fund and from any policy of  
214 insurance procured pursuant to the provisions of section 105.721 shall not exceed

215 the limits of liability as provided in sections 537.600 to 537.610, RSMo. No  
216 payment shall be made from the state legal expense fund or any policy of  
217 insurance procured with state funds pursuant to section 105.721 unless and until  
218 the benefits provided to pay the claim by any other policy of liability insurance  
219 have been exhausted.

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

223 9. Any rule or portion of a rule, as that term is defined in section 536.010,  
224 RSMo, that is promulgated under the authority delegated in sections 105.711 to  
225 105.726 shall become effective only if it has been promulgated pursuant to the  
226 provisions of chapter 536, RSMo. Nothing in this section shall be interpreted to  
227 repeal or affect the validity of any rule filed or adopted prior to August 28, 1999,  
228 if it fully complied with the provisions of chapter 536, RSMo. This section and  
229 chapter 536, RSMo, are nonseverable and if any of the powers vested with the  
230 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective  
231 date, or to disapprove and annul a rule are subsequently held unconstitutional,  
232 then the grant of rulemaking authority and any rule proposed or adopted after  
233 August 28, 1999, shall be invalid and void.

105.716. 1. Any investigation, defense, negotiation, **settlement**, or  
2 compromise of any claim covered by sections 105.711 to 105.726 shall be  
3 conducted by the attorney general; provided, that in the case of any claim against  
4 the department of conservation, the department of transportation or a public  
5 institution which awards baccalaureate degrees, or any officer or employee of  
6 such department or such institution, any investigation, defense, negotiation,  
7 **settlement**, or compromise of any claim covered by sections 105.711 to 105.726  
8 shall be conducted by legal counsel provided by the respective entity against  
9 which the claim is made or which employs the person against whom the claim is  
10 made. In the case of any payment from the state legal expense fund based upon  
11 a claim, **settlement agreement**, or judgment against the department of  
12 conservation, the department of transportation or any officer or employee thereof,  
13 the department so affected shall immediately transfer to the state legal expense  
14 fund from the department funds a sum equal to the amount expended from the  
15 state legal expense fund on its behalf.

16 2. All persons and entities protected by the state legal expense fund shall  
17 cooperate with the attorneys conducting any investigation and preparing any



18 defense under the provisions of sections 105.711 to 105.726 by assisting such  
19 attorneys in all respects, including the making of settlements, the securing and  
20 giving of evidence, and the attending and obtaining witness to attend hearings  
21 and trials. Funds in the state legal expense fund shall not be used to pay claims  
22 **[and], settlement agreements, or** judgments against those persons and entities  
23 who do not cooperate as required by this subsection.

24 3. The provisions of sections 105.711 to 105.726 notwithstanding, the  
25 attorney general may investigate, defend, negotiate, or compromise any claim  
26 covered by sections 105.711 to 105.726 against any public institution which  
27 awards baccalaureate degrees whose governing body has declared a state of  
28 financial exigency.

29 4. Notwithstanding the provisions of subsection 2 of section 105.711, funds  
30 in the state legal expense fund may be expended prior to the payment of any  
31 claim, **settlement agreement**, or any final judgment to pay costs of defense,  
32 including reasonable attorney's fees for retention of legal counsel, when the  
33 attorney general determines that a conflict exists or particular expertise is  
34 required, and also to pay for related legal expenses including medical  
35 examination fees, expert witness fees, court reporter expenses, travel costs and  
36 ancillary legal expenses incurred prior to the payment of a claim, **settlement**  
37 **agreement**, or any final judgment.

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