

FIRST REGULAR SESSION

# SENATE BILL NO. 475

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DEMPSEY.

Read 1st time February 19, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0937S.05I

## AN ACT

To repeal section 105.716, RSMo, and to enact in lieu thereof two new sections relating to the intervention of the general assembly in certain civil actions.

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

Section A. Section 105.716, RSMo, is repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 21.415 and 105.716, to read as  
3 follows:

**21.415. 1. The speaker of the house of representatives and the  
2 president pro tempore of the senate, as duly elected public officials and  
3 agents of the state of Missouri, shall jointly have standing to intervene  
4 on behalf of the general assembly as an interested party to be heard in  
5 any judicial, administrative, or other proceeding, in which the  
6 constitutionality of any provision of the Missouri Constitution, statute,  
7 rule, regulation, program, or policy is being challenged.**

**8 2. If the attorney general declines to defend a challenged  
9 provision of the Missouri Constitution, statute, rule, regulation,  
10 program, or policy, or does so in a manner deemed inadequate by the  
11 general assembly, then the general assembly shall further have  
12 standing to defend the challenged statute or provision alongside the  
13 attorney general or in the attorney general's stead. Such standing shall  
14 be invoked on behalf of the general assembly by agreement of the  
15 speaker of the house of representatives and the president pro tempore  
16 of the senate.**

**17 3. Whether the general assembly intervenes in a judicial  
18 proceeding as an interested party, or whether it intervenes with  
19 standing to defend the law and the Missouri Constitution, the general  
20 assembly shall act at all times as an agent of the people of Missouri.**

21           **4. Should the general assembly act to intervene in a judicial**  
22 **proceeding under this section, the respective committees of the house**  
23 **of representatives and the senate responsible for administration and**  
24 **accounts shall jointly approve the hiring of legal counsel to represent**  
25 **the general assembly. Any reasonable attorneys' fees, court costs, and**  
26 **related legal expenses the general assembly incurs as a result of**  
27 **intervention shall be paid from the state legal expense fund pursuant**  
28 **to subsection 5 of section 105.716.**

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

15           2. All persons and entities protected by the state legal expense fund shall  
16 cooperate with the attorneys conducting any investigation and preparing any  
17 defense under the provisions of sections 105.711 to 105.726 by assisting such  
18 attorneys in all respects, including the making of settlements, the securing and  
19 giving of evidence, and the attending and obtaining witness to attend hearings  
20 and trials. Funds in the state legal expense fund shall not be used to pay claims  
21 and judgments against those persons and entities who do not cooperate as  
22 required by this subsection.

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

28           4. Notwithstanding the provisions of subsection 2 of section 105.711, funds

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

36 **5. Notwithstanding the provisions of subsection 2 of section**  
37 **105.711, funds in the state legal expense fund may be expended to pay**  
38 **for the reasonable attorneys' fees, court costs, and related legal**  
39 **expenses incurred by the general assembly pursuant to section**  
40 **21.415. Moneys in the state legal expense fund shall also be available**  
41 **for the payment of any claim or any amount required by any final**  
42 **judgment, including claims for attorneys' fees, rendered by a court of**  
43 **competent jurisdiction against the general assembly when the general**  
44 **assembly is a party to the proceeding pursuant to section 21.415.**

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Bill

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