

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE NO. 2 FOR

SENATE BILL NO. 475

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DEMPSEY.

Offered April 16, 2015.

Senate Substitute No. 2 adopted, April 16, 2015.

Taken up for Perfection April 16, 2015. Bill declared Perfected and Ordered Printed, as amended.

ADRIANE D. CROUSE, Secretary.

0937S.09P

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, with an emergency clause.

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Section A. Section 105.716, RSMo, is repealed and two new sections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 or appeal a ruling
9 regarding a challenged provision of the Missouri Constitution, statute,
10 rule, regulation, program, or policy, or does so in a manner deemed
11 inadequate by the general assembly, then the general assembly shall
12 further have standing to defend the challenged statute or provision
13 alongside the attorney general or in the attorney general's stead. Such
14 standing shall be invoked on behalf of the general assembly by
15 agreement of the speaker of the house of representatives and the**

16 **president pro tempore of the senate.**

17 **3. Whether the speaker of the house of representatives and the**
18 **president pro tempore of the senate on behalf of the general assembly**
19 **intervene in a judicial proceeding as an interested party, or whether**
20 **they intervene with standing to defend the law and the Missouri**
21 **Constitution, the general assembly shall act at all times as an agent of**
22 **the people of Missouri.**

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

31 **5. Subject to the approval of the president pro tempore and the**
32 **senate committee responsible for administration and accounts or the**
33 **speaker of the house of representatives and the house committee**
34 **responsible for administration and accounts, respectively, if the senate**
35 **or the house of representatives is named as a party in any civil action**
36 **or a member of the senate or the house of representatives is named as**
37 **a party in his or her official capacity in any civil action, then such body**
38 **or member shall be authorized to retain private legal counsel and any**
39 **reasonable attorneys' fees, court costs, and related legal expenses the**
40 **body or member incurs as a result of such action shall be paid from the**
41 **state legal expense fund pursuant to subsection 5 of section 105.716.**

42 **6. In any legal action undertaken by the general assembly**
43 **pursuant to this section, a member of either house may file an amicus**
44 **brief with any court of competent jurisdiction containing his or her**
45 **objections to the position taken by the general assembly or either house**
46 **thereof, provided that no such amicus brief shall be deemed to**
47 **represent the official position of the general assembly.**

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 or any member thereof**
40 **pursuant to section 21.415. Moneys in the state legal expense fund shall**
41 **also be available for the payment of any claim or any amount required**

42 **by any final judgment, including claims for attorneys' fees, rendered by**
43 **a court of competent jurisdiction against the general assembly or any**
44 **member thereof when the general assembly or any member thereof is**
45 **a party to the proceeding pursuant to section 21.415.**

Section B. Because of the need to have a vigorous defense of the validity
2 of Missouri law, section A of this act is deemed necessary for the immediate
3 preservation of the public health, welfare, peace and safety, and is hereby
4 declared to be an emergency act within the meaning of the constitution, and
5 section A of this act shall be in full force and effect upon its passage and
6 approval.

Unofficial

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Bill

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