

SENATE SUBSTITUTE

FOR

SENATE BILL NO. 475

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Section A. Section 105.716, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 21.415 and 105.716, to read as follows:

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

2. If the attorney general declines to defend or appeal a ruling regarding a challenged provision of the Missouri Constitution, statute, rule, regulation, program, or policy, or does so in a manner deemed inadequate by the general assembly, then the general assembly shall further have standing to defend the challenged statute or provision alongside the attorney general or in the attorney general's stead. Such standing shall

1 be invoked on behalf of the general assembly by agreement of the
2 speaker of the house of representatives and the president pro
3 tempore of the senate.

4 3. Whether the speaker of the house of representatives and
5 the president pro tempore of the senate on behalf of the general
6 assembly intervene in a judicial proceeding as an interested
7 party, or whether they intervene with standing to defend the law
8 and the Missouri Constitution, the general assembly shall act at
9 all times as an agent of the people of Missouri.

10 4. Should the general assembly act to intervene in a
11 judicial proceeding under this section, the respective committees
12 of the house of representatives and the senate responsible for
13 administration and accounts shall jointly approve the hiring of
14 legal counsel to represent the general assembly. Any reasonable
15 attorneys' fees, court costs, and related legal expenses the
16 general assembly incurs as a result of intervention shall be paid
17 from the state legal expense fund pursuant to subsection 5 of
18 section 105.716.

19 5. Subject to the approval of the president pro tempore and
20 the senate committee responsible for administration and accounts
21 or the speaker of the house of representatives and the house
22 committee responsible for administration and accounts,
23 respectively, if a member of the senate or the house of
24 representatives is named as a party in his or her official
25 capacity in any civil action involving a member or members of
26 only one house of the general assembly, then such member shall be
27 authorized to retain private legal counsel and any reasonable
28 attorneys' fees, court costs, and related legal expenses the

1 member incurs as a result of such action shall be paid from the
2 state legal expense fund pursuant to subsection 5 of section
3 105.716.

4 6. In any legal action undertaken by the general assembly
5 pursuant to this section, a member of either house may file an
6 amicus brief with any court of competent jurisdiction containing
7 his or her objections to the position taken by the general
8 assembly or either house thereof, provided that no such amicus
9 brief shall be deemed to represent the official position of the
10 general assembly.

11 105.716. 1. Any investigation, defense, negotiation, or
12 compromise of any claim covered by sections 105.711 to 105.726
13 shall be conducted by the attorney general; provided, that in the
14 case of any claim against the department of conservation, the
15 department of transportation or a public institution which awards
16 baccalaureate degrees, or any officer or employee of such
17 department or such institution, any investigation, defense,
18 negotiation, or compromise of any claim covered by sections
19 105.711 to 105.726 shall be conducted by legal counsel provided
20 by the respective entity against which the claim is made or which
21 employs the person against whom the claim is made.

22 In the case of any payment from the state legal expense fund
23 based upon a claim or judgment against the department of
24 conservation, the department of transportation or any officer or
25 employee thereof, the department so affected shall immediately
26 transfer to the state legal expense fund from the department
27 funds a sum equal to the amount expended from the state legal
28 expense fund on its behalf.

1 2. All persons and entities protected by the state legal
2 expense fund shall cooperate with the attorneys conducting any
3 investigation and preparing any defense under the provisions of
4 sections 105.711 to 105.726 by assisting such attorneys in all
5 respects, including the making of settlements, the securing and
6 giving of evidence, and the attending and obtaining witness to
7 attend hearings and trials. Funds in the state legal expense
8 fund shall not be used to pay claims and judgments against those
9 persons and entities who do not cooperate as required by this
10 subsection.

11 3. The provisions of sections 105.711 to 105.726
12 notwithstanding, the attorney general may investigate, defend,
13 negotiate, or compromise any claim covered by sections 105.711 to
14 105.726 against any public institution which awards baccalaureate
15 degrees whose governing body has declared a state of financial
16 exigency.

17 4. Notwithstanding the provisions of subsection 2 of
18 section 105.711, funds in the state legal expense fund may be
19 expended prior to the payment of any claim or any final judgment
20 to pay costs of defense, including reasonable attorney's fees for
21 retention of legal counsel, when the attorney general determines
22 that a conflict exists or particular expertise is required, and
23 also to pay for related legal expenses including medical
24 examination fees, expert witness fees, court reporter expenses,
25 travel costs and ancillary legal expenses incurred prior to the
26 payment of a claim or any final judgment.

27 5. Notwithstanding the provisions of subsection 2 of
28 section 105.711, funds in the state legal expense fund may be

1 expended to pay for the reasonable attorneys' fees, court costs,
2 and related legal expenses incurred by the general assembly or
3 any member thereof pursuant to section 21.415. Moneys in the
4 state legal expense fund shall also be available for the payment
5 of any claim or any amount required by any final judgment,
6 including claims for attorneys' fees, rendered by a court of
7 competent jurisdiction against the general assembly or any member
8 thereof when the general assembly or any member thereof is a
9 party to the proceeding pursuant to section 21.415.

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