

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 916

AN ACT

To repeal sections 537.600 and 537.610, RSMo, and to enact in lieu thereof two new sections relating to sovereign immunity.

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

Section A. Sections 537.600 and 537.610, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 537.600 and 537.610, to read as follows:

537.600. 1. Such sovereign or governmental tort immunity as existed at common law in this state prior to September 12, 1977, except to the extent waived, abrogated or modified by statutes in effect prior to that date, shall remain in full force and effect; except that, the immunity of the public entity from liability and suit for compensatory damages for negligent acts or omissions is hereby expressly waived in the following instances:

(1) Injuries directly resulting from the negligent acts or omissions by public employees arising out of the operation of motor vehicles or motorized vehicles within the course of their employment;

(2) Injuries caused by the condition of a public entity's property if the plaintiff establishes that the property was in dangerous condition at the time of the injury, that the injury directly resulted from the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of harm of the kind of injury which was incurred, and that either a negligent or wrongful act or omission of an employee of the public entity within the course of his employment created the dangerous condition or

a public entity had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have taken measures to protect against the dangerous condition. In any action under this subdivision wherein a plaintiff alleges that he was damaged by the negligent, defective or dangerous design of a highway or road, which was designed and constructed prior to September 12, 1977, the public entity shall be entitled to a defense which shall be a complete bar to recovery whenever the public entity can prove by a preponderance of the evidence that the alleged negligent, defective, or dangerous design reasonably complied with highway and road design standards generally accepted at the time the road or highway was designed and constructed.

2. The express waiver of sovereign immunity in the instances specified in subdivisions (1) and (2) of subsection 1 of this section are absolute waivers of sovereign immunity in all cases within such situations whether or not the public entity was functioning in a governmental or proprietary capacity and whether or not the public entity is covered by a liability insurance for tort.

3. The term "public entity" as used in this section shall include any multistate compact agency created by a compact formed between this state and any other state which has been approved by the Congress of the United States.

4. When acting within the scope of a contract with the Missouri department of transportation, private contractors and subcontractors performing work in accordance with the plans and specifications approved by the Missouri department of transportation shall have sovereign or governmental tort immunity to the same extent as a public entity, including any limitation on awards for liability provided for in section 537.610. The immunity provided under this

subsection, for any claims arising thereof, shall commence upon the official notice to proceed and such immunity shall continue after the Missouri department of transportation formally accepts the completed project. Such immunity shall be subject to the exceptions that are set forth in this section.

537.610. 1. The commissioner of administration, through the purchasing division, and the governing body of each political subdivision of this state, notwithstanding any other provision of law, may purchase liability insurance for tort claims, made against the state or the political subdivision, but the maximum amount of such coverage shall not exceed two million dollars for all claims arising out of a single occurrence and shall not exceed three hundred thousand dollars for any one person in a single accident or occurrence, except for those claims governed by the provisions of the Missouri workers' compensation law, chapter 287, and no amount in excess of the above limits shall be awarded or settled upon. Sovereign immunity for the state of Missouri and its political subdivisions is waived only to the maximum amount of and only for the purposes covered by such policy of insurance purchased pursuant to the provisions of this section and in such amount and for such purposes provided in any self-insurance plan duly adopted by the governing body of any political subdivision of the state. For purposes of this section as it relates to political subdivisions, the term "purchase" refers only to the direct acquisition by a governing body of a political subdivision of this state of insurance coverage from an insurance company or other business entity and does not include any indirect action by contract or otherwise including, but not limited to, requiring additional insured

coverage or insured status under the insurance policy of another person or entity.

2. The liability of the state and its public entities on claims within the scope of sections 537.600 to 537.650, shall not exceed two million dollars for all claims arising out of a single accident or occurrence and shall not exceed three hundred thousand dollars for any one person in a single accident or occurrence, except for those claims governed by the provisions of the Missouri workers' compensation law, chapter 287.

3. No award for damages on any claim against a public entity within the scope of sections 537.600 to 537.650, shall include punitive or exemplary damages.

4. If the amount awarded to or settled upon multiple claimants exceeds two million dollars, any party may apply to any circuit court to apportion to each claimant his proper share of the total amount limited by subsection 1 of this section. The share apportioned each claimant shall be in the proportion that the ratio of the award or settlement made to him bears to the aggregate awards and settlements for all claims arising out of the accident or occurrence, but the share shall not exceed three hundred thousand dollars.

5. The limitation on awards for liability provided for in this section shall be increased or decreased on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce. The current value of the limitation shall be calculated by the director of the department of commerce and insurance, who shall furnish that value to the secretary of state, who shall publish such value in the Missouri Register as soon after

each January first as practicable, but it shall otherwise be exempt from the provisions of section 536.021. The applicable limitation on awards for liability provided for in this section as to a given claim shall be the limitation then in effect on the date of the accident or occurrence giving rise to the claim.

6. Any claim filed against any public entity under this section shall be subject to the penalties provided by supreme court rule 55.03, or any successor rule.