

SECOND REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 916

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURGER.

3834S.08P

KRISTINA MARTIN, Secretary

## AN ACT

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

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

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2 repealed and two new sections enacted in lieu thereof, to be  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

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

9 (1) Injuries directly resulting from the negligent  
10 acts or omissions by public employees, **or an agent of the**  
11 **Missouri department of transportation**, arising out of the  
12 operation of motor vehicles or motorized vehicles within the  
13 course of their employment;

14           (2) Injuries caused by the condition of a public  
15 entity's property if the plaintiff establishes that the  
16 property was in dangerous condition at the time of the  
17 injury, that the injury directly resulted from the dangerous  
18 condition, that the dangerous condition created a reasonably  
19 foreseeable risk of harm of the kind of injury which was  
20 incurred, and that either a negligent or wrongful act or  
21 omission of an employee of the public entity, **or an agent of**  
22 **the Missouri department of transportation**, within the course  
23 of his employment, created the dangerous condition or a  
24 public entity, **or an agent of the Missouri department of**  
25 **transportation**, had actual or constructive notice of the  
26 dangerous condition in sufficient time prior to the injury  
27 to have taken measures to protect against the dangerous  
28 condition. In any action under this subdivision wherein a  
29 plaintiff alleges that he was damaged by the negligent,  
30 defective, or dangerous design of a highway or road, which  
31 was designed and constructed prior to September 12, 1977,  
32 the public entity shall be entitled to a defense which shall  
33 be a complete bar to recovery whenever the public entity can  
34 prove by a preponderance of the evidence that the alleged  
35 negligent, defective, or dangerous design reasonably  
36 complied with highway and road design standards generally  
37 accepted at the time the road or highway was designed and  
38 constructed.

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

46           3. A statutory cause of action for damages against an  
47 agent of the Missouri department of transportation is hereby  
48 created, replacing any such common law cause of action  
49 against a private contractor, subcontractor, engineer, or  
50 employee thereof for liability of claims arising from  
51 design, condition, or maintenance of a Missouri department  
52 of transportation project after execution of a contract to  
53 perform work but prior to the commencement of construction  
54 activities on the project site and for when construction  
55 activities on the project site are approved and accepted by  
56 the Missouri department of transportation. The Missouri  
57 department of transportation shall be solely liable for  
58 personal injury or death arising out of instances after  
59 execution of a contract to perform work but prior to the  
60 commencement of construction activities and after  
61 construction activities on the project site are approved and  
62 accepted by the Missouri department of transportation.

63           4. The immunity provided in subsection 3 of this  
64 section shall not apply when any of the following conditions  
65 exist:

66           (1) The work is so defective that it creates an  
67 imminent danger to third parties;

68           (2) A defect in the work was concealed and not  
69 discoverable by a reasonable inspection by the state  
70 highways and transportation commission;

71           (3) The agent of the Missouri department of  
72 transportation knew of the dangerous condition and did not  
73 disclose it to the state highways and transportation  
74 commission; or

75           (4) The plans or specifications followed were so  
76 imperfect or improper that the agent of the Missouri

77 department of transportation should have known the work to  
78 be done thereunder would result in an unsafe condition.

79 5. The Missouri standard specifications for highway  
80 construction, or its successor, as published by the state  
81 highway and transportation commission shall not include  
82 provisions requiring a contractor to indemnify or defend the  
83 state, the state highways and transportation commission,  
84 employees of the Missouri department of transportation, or  
85 an agent of the Missouri department of transportation prior  
86 to the commencement of work under a contract. No contractor  
87 shall be required to agree to an indemnification or a duty  
88 to defend provision as a condition of any agreement to  
89 perform work for the state highways and transportation  
90 commission.

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

95 7. The term "agent of the Missouri department of  
96 transportation" as used in this section shall mean any  
97 private contractors, subcontractors, engineers or the  
98 employees thereof performing work in accordance with the  
99 plans and specifications approved by the Missouri department  
100 of transportation.

101 8. The term "final inspection" as used in this section  
102 shall mean the project engineer has made an inspection of  
103 the project and determined that all construction  
104 contemplated by the contract has been completed to the  
105 engineer's satisfaction, and the engineer has notified the  
106 contractor in writing of acceptance for maintenance as of  
107 the date of that inspection, with the exception of items  
108 covered by item specific performance bonds.

109           9. The phrase "after execution of a contract to  
110 perform work but prior to the commencement of construction  
111 activities" as used in this section shall apply as a period  
112 of time when a contract is fully executed and signed by an  
113 agent of the Missouri department of transportation and the  
114 Missouri department of transportation but shall end when the  
115 agent of the Missouri department of transportation first  
116 begins performing work pursuant to the terms of the  
117 contract, including the furnishing of labor, material,  
118 equipment, and other incidentals necessary or convenient to  
119 the successful completion of the project and the carrying  
120 out of duties and obligations imposed by the contract.

121           10. The phrase "construction activities on the project  
122 site are approved and accepted by the Missouri department of  
123 transportation" as used in this section shall apply as a  
124 fixed date in time when all corrections are completed by an  
125 agent of the Missouri department of transportation and a  
126 final inspection has been conducted by the engineer for the  
127 Missouri department of transportation. Approval and  
128 acceptance of the construction activities on the project  
129 site shall be deemed approved and accepted for partial or  
130 full acceptance of the work on a project site upon the  
131 expiration of twenty business days after conducting the  
132 final inspection by the Missouri department of  
133 transportation.

537.610. 1. The commissioner of administration,  
2 through the purchasing division, and the governing body of  
3 each political subdivision of this state, notwithstanding  
4 any other provision of law, may purchase liability insurance  
5 for tort claims, made against the state or the political  
6 subdivision, but the maximum amount of such coverage shall  
7 not exceed two million dollars for all claims arising out of

8 a single occurrence and shall not exceed three hundred  
9 thousand dollars for any one person in a single accident or  
10 occurrence, except for those claims governed by the  
11 provisions of the Missouri workers' compensation law,  
12 chapter 287, and no amount in excess of the above limits  
13 shall be awarded or settled upon. Sovereign immunity for  
14 the state of Missouri and its political subdivisions is  
15 waived only to the maximum amount of and only for the  
16 purposes covered by such policy of insurance purchased  
17 pursuant to the provisions of this section and in such  
18 amount and for such purposes provided in any self-insurance  
19 plan duly adopted by the governing body of any political  
20 subdivision of the state. **For purposes of this section as  
21 it relates to political subdivisions, the term "purchase"  
22 refers only to the direct acquisition by a governing body of  
23 a political subdivision of this state of insurance coverage  
24 from an insurance company or other business entity and does  
25 not include any indirect action by contract or otherwise  
26 including, but not limited to, requiring additional insured  
27 coverage or insured status under the insurance policy of  
28 another person or entity.**

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

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

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

50           5. The limitation on awards for liability provided for  
51 in this section shall be increased or decreased on an annual  
52 basis effective January first of each year in accordance  
53 with the Implicit Price Deflator for Personal Consumption  
54 Expenditures as published by the Bureau of Economic Analysis  
55 of the United States Department of Commerce. The current  
56 value of the limitation shall be calculated by the director  
57 of the department of commerce and insurance, who shall  
58 furnish that value to the secretary of state, who shall  
59 publish such value in the Missouri Register as soon after  
60 each January first as practicable, but it shall otherwise be  
61 exempt from the provisions of section 536.021.

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

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