

SENATE SUBSTITUTE
FOR
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.

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2 repealed and two new sections enacted in lieu thereof, to be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. A statutory cause of action for damages against an
80 agent of the Missouri department of transportation is hereby
81 created, replacing any such common law cause of action
82 against a private contractor, subcontractor, engineer, or
83 employee thereof for liability of claims arising from
84 design, condition, or maintenance of a Missouri department
85 of transportation project during physical construction

86 activities. An agent of the Missouri department of
87 transportation may be liable for personal injury or death
88 arising out of instances during physical construction
89 activities:

90 (1) Subject to the limits set forth in section 537.610
91 when the personal injury or death is fifty percent or less
92 the fault of the agent of the Missouri department of
93 transportation; or

94 (2) Without limitation when the personal injury or
95 death is more than fifty percent the fault of the agent of
96 the Missouri department of transportation.

97 6. The Missouri standard specifications for highway
98 construction, or its successor, as published by the state
99 highway and transportation commission shall not include
100 provisions requiring a contractor to indemnify or defend the
101 state, the state highways and transportation commission,
102 employees of the Missouri department of transportation, or
103 an agent of the Missouri department of transportation prior
104 to the commencement of work under a contract. No contractor
105 shall be required to agree to an indemnification or a duty
106 to defend provision as a condition of any agreement to
107 perform work for the state highways and transportation
108 commission.

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

113 8. The term "agent of the Missouri department of
114 transportation" as used in this section shall mean any
115 private contractors, subcontractors, engineers or the
116 employees thereof performing work in accordance with the
117 plans and specifications approved by the Missouri department
118 of transportation.

119 9. The term "final inspection" as used in this section
120 shall mean the project engineer has made an inspection of
121 the project and determined that all construction
122 contemplated by the contract has been completed to the
123 engineer's satisfaction, and the engineer has notified the
124 contractor in writing of acceptance for maintenance as of
125 the date of that inspection, with the exception of items
126 covered by item specific performance bonds.

127 10. The phrase "after execution of a contract to
128 perform work but prior to the commencement of construction
129 activities" as used in this section shall apply as a period
130 of time when a contract is fully executed and signed by an
131 agent of the Missouri department of transportation and the
132 Missouri department of transportation but shall end when the
133 agent of the Missouri department of transportation first
134 begins performing work pursuant to the terms of the
135 contract, including the furnishing of labor, material,
136 equipment, and other incidentals necessary or convenient to
137 the successful completion of the project and the carrying
138 out of duties and obligations imposed by the contract.

139 11. The phrase "during construction activities" as
140 used in this section shall apply as a period of time after
141 the first weekly payroll documents are submitted to the
142 Missouri department of transportation for a project so
143 contracted but shall end when construction activities on the
144 project site are approved and accepted by the Missouri
145 department of transportation.

146 12. The phrase "construction activities on the project
147 site are approved and accepted by the Missouri department of
148 transportation" as used in this section shall apply as a
149 fixed date in time when all corrections are completed by an
150 agent of the Missouri department of transportation and a
151 final inspection has been conducted by the engineer for the

152 Missouri department of transportation. Approval and
153 acceptance of the construction activities on the project
154 site shall be deemed approved and accepted for partial or
155 full acceptance of the work on a project site upon the
156 expiration of thirty business days after conducting the
157 final inspection by the Missouri department of
158 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. The
62 applicable limitation on awards for liability provided for
63 in this section as to a given claim shall be the limitation
64 then in effect on the date of the accident or occurrence
65 giving rise to the claim.

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