

FIRST REGULAR SESSION

HOUSE BILL NO. 383

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PRATT (Sponsor),
WRIGHT-JONES AND SCHNEIDER (Co-sponsors).

Read 1st time January 27, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1145L.011

AN ACT

To repeal section 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Section A. Section 537.600 and 537.610, RSMo, are repealed and two new sections
2 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
2 in this state prior to September 12, 1977, except to the extent waived, abrogated or modified by
3 statutes in effect prior to that date, shall remain in full force and effect; except that, the immunity
4 of the public entity from liability and suit for compensatory damages for negligent acts or
5 omissions is hereby expressly waived in the following instances:

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

9 (2) Injuries caused by the condition of a public entity's property if the plaintiff establishes
10 that the property was in dangerous condition at the time of the injury, that the injury directly
11 resulted from the dangerous condition, that the dangerous condition created a reasonably
12 foreseeable risk of harm of the kind of injury which was incurred, and that either a negligent or
13 wrongful act or omission of an employee of the public entity within the course of his
14 employment created the dangerous condition or a public entity had actual or constructive notice
15 of the dangerous condition in sufficient time prior to the injury to have taken measures to protect

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 against the dangerous condition. In any action under this subdivision wherein a plaintiff alleges
17 that he was damaged by the negligent, defective or dangerous design of a highway or road, which
18 was designed and constructed prior to September 12, 1977, the public entity shall be entitled to
19 a defense which shall be a complete bar to recovery whenever the public entity can prove by a
20 preponderance of the evidence that the alleged negligent, defective, or dangerous design
21 reasonably complied with highway and road design standards generally accepted at the time the
22 road or highway was designed and constructed.

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

28 3. The term "public entity" as used in this section shall include any multi-state compact
29 agency created by a compact formed between this state and any other state which has been
30 approved by the Congress of the United States. [Sovereign immunity, if any, is waived for the
31 proprietary functions of such multi-state compact agencies as of the date that the Congress of the
32 United States approved any such multi-state compact.

33 4. Pursuant to the prerogative of the general assembly to declare the public policy of the
34 state in matters concerning liability in tort for public entities, the general assembly declares that
35 prior to September 12, 1977, there was no sovereign or governmental immunity for the
36 proprietary functions of multistate compact agencies operating pursuant to the provisions of
37 sections 70.370 to 70.440, RSMo, and 238.030 to 238.110, RSMo, including functions such as
38 the operation of motor vehicles and the maintenance of property, involved in the operation of a
39 public transit or public transportation system, and that policy is hereby reaffirmed and declared
40 to remain in effect.

41 5. Any court decision dated subsequent to August 13, 1978, holding to the contrary of
42 subsection 4 of this section erroneously interprets the law and the public policy of this state, and
43 any claimant alleging tort liability under such circumstances for an occurrence within five years
44 prior to February 17, 1988, shall in addition to the time allowed by the applicable statutes of
45 limitation or limitation of appeal, have up to one year after July 14, 1989, to file or refile an
46 action against such public entity and may recover damages imposed by the common law of this
47 state as for any other person alleged to have caused similar damages under similar
48 circumstances.]

537.610. 1. The commissioner of administration, through the purchasing division, and
2 the governing body of each political subdivision of this state, notwithstanding any other
3 provision of law, may purchase liability insurance for tort claims, made against the state or the

4 political subdivision, but the maximum amount of such coverage shall not exceed two million
5 dollars for all claims arising out of a single occurrence and shall not exceed three hundred
6 thousand dollars for any one person in a single accident or occurrence, except for those claims
7 governed by the provisions of the Missouri workers' compensation law, chapter 287, RSMo, and
8 no amount in excess of the above limits shall be awarded or settled upon. Sovereign immunity
9 for the state of Missouri and its political subdivisions is waived only to the maximum amount
10 of and only for the purposes covered by such policy of insurance purchased pursuant to the
11 provisions of this section and in such amount and for such purposes provided in any
12 self-insurance plan duly adopted by the governing body of any political subdivision of the state.

13 2. The liability of the state and its public entities on claims within the scope of sections
14 537.600 to 537.650, shall not exceed two million dollars for all claims arising out of a single
15 accident or occurrence and shall not exceed three hundred thousand dollars for any one person
16 in a single accident or occurrence, except for those claims governed by the provisions of the
17 Missouri workers' compensation law, chapter 287, RSMo.

18 3. **The remedy against any public entity under section 537.600 or 537.650 for**
19 **injuries, death, or property damage arising or resulting from the negligent acts or**
20 **omissions of its public employee is exclusive of any other civil action or proceeding for**
21 **money damages by reason of the same subject matter against such employee or the**
22 **employee's estate. Any other civil action or proceeding for money damages arising out of**
23 **or relating to the same subject matter against the employee or the employee's estate is**
24 **precluded without regard to when the act or omission occurred.**

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

27 [4.] 5. If the amount awarded to or settled upon multiple claimants exceeds two million
28 dollars, any party may apply to any circuit court to apportion to each claimant his proper share
29 of the total amount limited by subsection 1 of this section. The share apportioned each claimant
30 shall be in the proportion that the ratio of the award or settlement made to him bears to the
31 aggregate awards and settlements for all claims arising out of the accident or occurrence, but the
32 share shall not exceed three hundred thousand dollars.

33 [5.] 6. The limitation on awards for liability provided for in this section shall be
34 increased or decreased on an annual basis effective January first of each year in accordance with
35 the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau
36 of Economic Analysis of the United States Department of Commerce. The current value of the
37 limitation shall be calculated by the director of the department of insurance, who shall furnish
38 that value to the secretary of state, who shall publish such value in the Missouri Register as soon

39 after each January first as practicable, but it shall otherwise be exempt from the provisions of
40 section 536.021, RSMo.

41 [6.] 7. Any claim filed against any public entity under this section shall be subject to the
42 penalties provided by supreme court rule 55.03.