

FIRST REGULAR SESSION

# HOUSE BILL NO. 848

93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE PRATT.

Read 1<sup>st</sup> time March 29, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2123L.01I

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## AN ACT

To repeal section 537.600, RSMo, and to enact in lieu thereof one new section relating to sovereign immunity.

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

Section A. Section 537.600, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.600, to read as follows: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

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.

15 of the dangerous condition in sufficient time prior to the injury to have taken measures to protect  
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 **and any not-for-profit organization that**  
31 **provides or contracts for ambulance services pursuant to authority granted to such not-**  
32 **for-profit organization by a city, county, town, or village and of which a majority of the**  
33 **governing body consists of elected officials or individuals appointed by the mayor, board**  
34 **of alderman, city council, county commission, or county legislature. Such not-for-profit**  
35 **organization shall be entitled to sovereign or governmental tort immunity pursuant to**  
36 **sections 537.600 to 537.650 as limited by such sections.** Sovereign immunity, if any, is waived  
37 for the proprietary functions of such multi-state compact agencies as of the date that the Congress  
38 of the United States approved any such multi-state compact.

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

47         5. Any court decision dated subsequent to August 13, 1978, holding to the contrary of  
48 subsection 4 of this section erroneously interprets the law and the public policy of this state, and  
49 any claimant alleging tort liability under such circumstances for an occurrence within five years  
50 prior to February 17, 1988, shall in addition to the time allowed by the applicable statutes of

51 limitation or limitation of appeal, have up to one year after July 14, 1989, to file or refile an  
52 action against such public entity and may recover damages imposed by the common law of this  
53 state as for any other person alleged to have caused similar damages under similar circumstances.