

FIRST REGULAR SESSION

HOUSE BILL NO. 1196

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RUTH.

2400H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 226.095 and 537.600, RSMo, and to enact in lieu thereof one new section relating to governmental tort liability.

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

Section A. Sections 226.095 and 537.600, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 537.600, to read as follows: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 **and its public employees** from liability and suit for compensatory damages for negligent acts or omissions is hereby expressly waived **solely** 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.

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.

17 **(a) The general assembly hereby expressly abrogates the case of Jones v. State**
18 **Highway Commission, 593 S.W.2d 580 (Mo.App. W.D. 1979), and its progeny as it relates**
19 **to driving off the traveled portion of any highway or road as an allegation of general**
20 **negligence only. In all civil actions brought under this section, a jury shall be given an**
21 **instruction that says a plaintiff operating or riding in a vehicle in which the vehicle is**
22 **allowed to depart the paved portion of any highway or road without cause or excuse shall**
23 **be considered the direct cause of damages to plaintiff.**

24 **(b) In regard to a public entity's highway or road, such sovereign or governmental**
25 **tort immunity remains in full force and effect unless a physical defect of the traveled**
26 **portion of the public entity's highway or road creates a dangerous condition as**
27 **contemplated in subdivision (2) of this subsection. However, upon a plaintiff's leaving the**
28 **traveled portion of the public entity's highway or road, a public entity's sovereign or**
29 **governmental tort immunity shall be reinstated in full force and effect.**

30 **(c) In any action under this subdivision wherein a plaintiff alleges that he was damaged**
31 **by the negligent, defective or dangerous design of a highway or road, [~~which was designed and~~**
32 **~~constructed prior to September 12, 1977,~~] the public entity shall be entitled to a defense which**
33 **shall be a complete bar to recovery whenever the public entity can prove by a preponderance of**
34 **the evidence that the alleged negligent, defective, or dangerous design reasonably complied with**
35 **highway and road design standards generally accepted at the time the road or highway was**
36 **designed and constructed.**

37 **(3) As a matter of law, the public entity shall be entitled to a defense which shall be**
38 **a complete bar to recovery whenever the public entity can prove by a preponderance of the**
39 **evidence that, in any plaintiff's claim of an express waiver of sovereign immunity in the**
40 **instances specified in this subsection, the plaintiff's damages were caused by, or there was**
41 **a contributing cause of:**

42 **(a) The operation of a motor vehicle by the plaintiff or another person under the**
43 **influence of alcohol, a controlled substance, or medication, or any combination thereof; or**

44 **(b) The operation of a motor vehicle by the plaintiff or another person who is**
45 **unlicensed or whose license was suspended or revoked.**

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

51 3. The term "public entity" as used in this section shall include any multistate compact
52 agency created by a compact formed between this state and any other state which has been

53 approved by the Congress of the United States. **The term "public employee" shall include,**
54 **but is not limited to, any officer or employee of the state of Missouri or any agency of the**
55 **state or any multistate compact agency including, without limitation, elected officials,**
56 **appointees, members of state boards or commissions, and members of the Missouri**
57 **National Guard, as well as any officer or employee of a political subdivision of the state**
58 **including, without limitation, elected officials, appointees, and members of political**
59 **subdivision boards or commissions. The liability limits imposed on public entities under**
60 **section 537.610 shall also be applicable to tort claims against public employees.**

2 ~~[226.095. Upon request of the plaintiff in a negligence action against the~~
3 ~~department of transportation as defendant, the case shall be arbitrated by a panel~~
~~of three arbiters pursuant to the provisions of chapter 435.]~~

✓