

SECOND REGULAR SESSION
[PERFECTED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 840

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR GROSS.

Offered March 13, 2002.

Senate Substitute adopted, March 13, 2002.

Taken up for Perfection March 13, 2002. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

3397S.03P

AN ACT

To repeal sections 516.097 and 537.600, RSMo, relating to certain tort actions, and to enact in lieu thereof two new sections relating to the same subject.

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

Section A. Sections 516.097 and 537.600, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 516.097 and 537.600, to read as follows:

516.097. 1. Any action to recover damages for **economic loss**, personal injury, property damage or wrongful death arising out of a defective or unsafe condition of any improvement to real property, including any action for contribution or indemnity for damages sustained on account of the defect or unsafe condition, shall be commenced within ten years of the date on which [any] such improvement is completed.

2. This section shall only apply to actions against any person whose sole connection with the improvement is performing or furnishing, in whole or in part, the design, planning or construction, including architectural, engineering or construction services, of the improvement.

3. If any action is commenced against any person specified by subsection 2 [any] **of this section**, such person may, within one year of the date of the filing of such [an] action, notwithstanding the provisions of subsection 1 **of this section**, commence an action or a third

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

party action for contribution or indemnity for damages sustained or claimed in any action because of **economic loss**, personal injury, property damage or wrongful death arising out of a defective or unsafe condition of any improvement to real property.

4. This section shall not apply [if]:

(1) **If** an action is barred by another provision of law;

(2) **If** a person conceals any defect or deficiency in the design, planning or construction, including architectural, engineering or construction services, in an improvement for real property, if the defect or deficiency so concealed directly results in the defective or unsafe condition for which the action is brought;

(3) [The] **To limit any** action [is] brought against any owner or possessor of real estate or improvements [thereon] **on such real estate**.

5. The statute of limitation for buildings completed on August 13, 1976, shall begin to run on August 13, 1976, and shall be for the time specified [herein] **in this section**.

6. Upon execution of a certificate of substantial completion, the architect shall record the certificate in the office of the recorder of deeds in the county in which the project is situated. Such certificate shall be filed within ten days of execution. If an architect fails to file the certificate, the provisions of subsection 7 of this section shall not apply. The recorder shall be allowed a fee consistent with those fees proscribed in section 59.313.3(1) for recording each certificate.

7. Notwithstanding subsection 1 of section 516.097, if a certificate of substantial completion or occupancy permit is issued, the ten year period shall commence on the date the certificate of substantial completion is filed with the recorder of deeds or the date the occupancy permit is issued.

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:

(a) The property was in dangerous condition at the time of the injury[, that];

(b) The injury directly resulted from the dangerous condition[, that];

(c) The dangerous condition created a reasonably foreseeable risk of harm of the kind of injury which was incurred[, and that]; **and**

(d) 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. In any action under this subdivision wherein a plaintiff alleges that he was damaged by the negligent, defective or dangerous design of a highway or road, [which was designed and constructed prior to September 12, 1977,] the public entity shall be entitled to a defense which shall be a complete bar to recovery whenever the public entity can prove by a preponderance of the evidence that the alleged negligent, defective, or dangerous design reasonably complied with highway and road design standards generally accepted at the time the road or highway was designed and constructed. **Pursuant to the prerogative of the general assembly to declare the public policy of the state in matters concerning liability in tort for public entities, the general assembly declares that the above plain language does not include a requirement that property must have a physical defect as a necessary element for the property to be in a dangerous condition. The plain language clearly intends that government should be responsible for injuries to persons for negligently maintaining a dangerous condition in the same way as citizens are held to such standard of care. The legislature clearly did not intend that governmental agencies which create dangerous conditions or have notice of dangerous conditions may continue to maintain those dangerous conditions which cause serious injury with impunity.**

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

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

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

remain in effect.

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

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