

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE BILL NO. 608
99TH GENERAL ASSEMBLY

4589H.05C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 537.349 and 537.600, RSMo, and to enact in lieu thereof four new sections relating to civil liability due to criminal conduct.

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

Section A. Sections 537.349 and 537.600, RSMo, are repealed and four new sections
2 enacted in lieu thereof, to be known as sections 537.349, 537.600, 537.785, and 537.787, to read
3 as follows:

537.349. A person or legal entity owning or controlling an interest in real property, or
2 an agent of such person or entity, shall not incur any liability for the death of or injury to a
3 trespasser upon the property resulting from or arising by reason of the trespasser's commission
4 of the offense of trespass if the normal faculties of such trespasser are substantially impaired by
5 alcohol or the illegal influence of a controlled substance as defined in section 195.010. The
6 person or entity owning or controlling an interest in such real property shall not be immune from
7 liability if ~~negligence or~~ willful and wanton misconduct on the part of such person or entity or
8 agent thereof is the proximate cause of the death of or injury to the trespasser.

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;

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.

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
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 **the following:**

29 (1) **Any public employee for a claim that arises out of an act or omission of such**
30 **employee occurring during the performance of the employee's duties and within the scope**
31 **of the employee's employment unless the act or omission was intentional for the purpose**
32 **of causing the injury; and**

33 (2) Any multistate compact agency created by a compact formed between this state and
34 any other state which has been approved by the Congress of the United States.

537.785. 1. Sections 537.785 and 537.787 may be referred to and cited as the
2 "Business Premises Safety Act".

3 2. As used in sections 537.785 and 537.787, the following terms mean:

4 (1) "Business", any commercial or agricultural enterprise including, but not limited
5 to, sales, services, manufacturing, food service, entertainment, property management or
6 leasing company, or any other entity, whether for profit or not for profit, which owns,
7 operates, or leases property that is open to the public, whether for charge or free of charge,
8 and includes all employees and agents thereof. The term "business" shall not include
9 commercial residential or lodging operations;

10 (2) "Criminal act", those offenses specified under chapters 565 to 571;

11 (3) "Harmful act", an intentional or reckless offensive contact with another person
12 that has resulted in injury;

13 (4) "Injury", any personal injury including, but not limited to, physical injury,
14 sickness, disease, or death and all damages resulting therefrom including, but not limited
15 to, medical expenses, wage loss, and loss of service;

16 (5) "Person", any individual who is lawfully on the premises, without regard to the
17 person's status as an invitee or licensee. The term "person" shall not include employees
18 or agents of the business;

19 (6) "Premises", real property in the possession of and under the control of a
20 business;

21 (7) "Reasonable security measures", those precautions that a reasonable business
22 owner in such industry would implement in a particular area of the premises to guard
23 against criminal acts or harmful acts based on the condition of the premises and the cost
24 of implementing such precautions.

 537.787. 1. There is no duty upon a business to guard against criminal acts or
2 harmful acts on the premises unless the business knows or has reason to know that such
3 acts are being committed or are reasonably likely to be committed in a particular area of
4 the premises and sufficient time exists to prevent such crime or injury. In the absence of
5 such a duty, no civil action for damages shall lie against a business for injuries sustained
6 by a person in connection with criminal acts or harmful acts committed on the premises
7 by:

8 (1) Any other person; or

9 (2) An employee or agent of the business who was lawfully carrying a concealed
10 weapon and caused such injuries by use of the concealed weapon.

11 2. If a duty is found to exist under subsection 1 of this section, the following
12 affirmative defenses shall apply in any civil action for damages against a business for
13 injuries sustained by a person in connection with criminal acts or harmful acts committed
14 by another person on the premises:

15 (1) The business has implemented reasonable security measures;

16 (2) The claimant was on the premises and was:

17 (a) A trespasser;

18 (b) Attempting to commit a felony; or

19 (c) Engaged in the commission of a felony;

20 (3) The criminal acts or harmful acts occurred while the business was closed to the
21 public.

22 **3. Evidence of subsequent action taken by the business to provide protection to**
23 **persons on the premises shall not be admissible in evidence to show negligence or to**
24 **establish the feasibility of any security measures.**

25 **4. Nothing in this section shall be construed to create or increase the liability of a**
26 **business and does not affect any immunities from or defenses to liability established under**
27 **state law or available under common law to which a business may be entitled.**

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