

# SENATE BILL NO. 941

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

3324S.02I

KRISTINA MARTIN, Secretary

## AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to civil actions against private contractors for conditions of certain public properties.

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

Section A. Chapter 537, RSMo, is amended by adding thereto  
2 one new section, to be known as section 537.655, to read as  
3 follows:

537.655. 1. A statutory cause of action for damages  
2 for personal injury or death arising out of the repair or  
3 construction of a public highway or road against a private  
4 contractor, or employee of such private contractor, acting  
5 within the course and scope of a government contract with a  
6 public entity is hereby created and replaces any such common  
7 law cause of action. The elements of such cause of action  
8 are that the public highway or road was in a negligent,  
9 defective, or dangerous condition at the time of the injury  
10 or death, that the injury or death directly resulted from  
11 the negligent, defective, or dangerous condition, that the  
12 negligent, defective, or dangerous condition created a  
13 reasonably foreseeable risk of harm of the kind of injury  
14 which was incurred, and that either a negligent or wrongful  
15 act or omission of the private contractor, or an employee  
16 thereof, within the course and scope of a government  
17 contract for the repair or construction of the public

18 highway or road created the negligent, defective, or  
19 dangerous condition.

20         2. In any action brought pursuant to this section  
21 where a plaintiff alleges that he or she was injured by the  
22 negligent, defective, or dangerous repair or construction of  
23 a public highway or road, the private contractor, or any  
24 employee of a private contractor, shall be entitled to an  
25 affirmative defense to liability, and there shall be a  
26 complete bar to recovery whenever the private contractor, or  
27 employee thereof, can prove by a preponderance of the  
28 evidence that the alleged negligent, defective, or dangerous  
29 repair or construction reasonably complied with highway or  
30 road standards and regulations of the United States  
31 Department of Transportation, the Federal Highway  
32 Administration, the Manual on Uniform Traffic Control  
33 Devices for Streets and Highways, and the Missouri  
34 department of transportation at the time that the public  
35 highway or road was repaired or constructed and that the  
36 repair or construction by the private contractor, or  
37 employee thereof, was within the course and scope of a  
38 government contract.

39         3. (1) In any action brought pursuant to this section  
40 against a private contractor, or an employee of the private  
41 contractor, for damages for personal injury or death arising  
42 out of the repair or construction of a public highway or  
43 road, the liability of a private contractor, or an employee  
44 of the private contractor, shall not exceed two million  
45 dollars for all claims arising out of a single occurrence  
46 and shall not exceed three hundred thousand dollars for any  
47 one person in a single accident or occurrence. If the  
48 amount awarded to multiple claimants exceeds two million  
49 dollars, any party may apply to any circuit court to

50 apportion to each claimant his or her proper share of the  
51 total amount limited by this subsection. The share  
52 apportioned each claimant shall be in the proportion that  
53 the ratio of the award made to the claimant bears to the  
54 aggregate awards for all claims arising out of the accident  
55 or occurrence, but the share shall not exceed three hundred  
56 thousand dollars.

57 (2) No award for damages in any action brought  
58 pursuant to this section against a private contractor or an  
59 employee of the private contractor for damages for personal  
60 injury or death arising out of the repair or construction of  
61 a public highway or road shall include punitive or exemplary  
62 damages.

63 (3) The limitation on awards for liability provided  
64 for in subdivision (1) of this subsection shall be increased  
65 or decreased on an annual basis effective January first of  
66 each year in accordance with the Implicit Price Deflator for  
67 Personal Consumption Expenditures as published by the Bureau  
68 of Economic Analysis of the United States Department of  
69 Commerce. The current value of the limitation shall be  
70 calculated by the director of the department of commerce and  
71 insurance, who shall furnish that value to the secretary of  
72 state, who shall publish such value in the Missouri Register  
73 as soon after each January first as practicable, but it  
74 shall otherwise be exempt from the provisions of section  
75 536.021.

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