

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3380-01
Bill No.: HB 1304
Subject: Corporations; Courts; Judges; Liability; Health Care Professionals; Physicians
Type: Original
Date: February 3, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Highway Fund	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown	Unknown	Unknown

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Attorney General, Office of Administration – Administrative Hearing Commission, Department of Mental Health, Department of Insurance, Missouri Consolidated Health Care Plan** and the **Department of Conservation** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Department of Transportation (MoDOT)** assume the proposal incorporates the application of doctrine of joint and several liability in tort claims. The doctrine of joint and several liability contemplates that regardless of the percentage of fault assessed among all co-defendants, each one of these defendants is liable to pay the entire judgment if one or more of the remaining co-defendants cannot pay. This legislation limits the application of joint and several liability against a defendant in a tort action, which would include Missouri Highways and Transportation Commission (MHTC), only if the defendant is found to be fifty or more percent at fault. This provision could be advantageous to MHTC/MoDOT. However, an accurate estimate would be impossible to determine as the benefit of this revision would depend upon the number of cases impacted, the potential liability of MHTC in such cases, and other related factors.

ASSUMPTION (continued)

Officials from the **Department of Health and Senior Services** did not respond to Oversight's request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
HIGHWAY FUND			
<u>Savings</u> – Department of Transportation Liability limits	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON HIGHWAY FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

The proposed legislation would make changes to the laws affecting claims for damages and the payment thereof. In its main provisions, the proposal would:

- (1) Establish venue in all tort actions in which the cause of action occurred in Missouri, including torts for improper health care, in the county where the cause of action occurred;
- (2) Establish venue in all tort actions in which the cause of action occurred outside Missouri:
 - (a) For individual defendants, in the county of the individual's principal place of residence; and

DESCRIPTION (continued)

- (b) For corporate defendants, in the county where the corporate defendant's registered agent is located or, if no registered agent is reported or maintained, in Cole County;
- (3) Establish venue in all actions in which a county is plaintiff in the county where the defendant resides, or in the county suing and where the defendant may be found;
- (4) Require motions to dismiss or transfer based upon improper venue to be deemed granted if not denied within 60 days, unless the time period is waived in writing by all parties;
- (5) Allow discovery of a defendant's assets in tort actions, including torts for improper health care, only after a court determines that the plaintiff has a submissible case on punitive damages;
- (6) Define "costs" to mean the total of fees, miscellaneous charges, and surcharges (defined in Section 488.010, RSMo), as well as reasonable charges and fees of endorsed expert witnesses and court reporters and reasonable expenses for travel, record retrieval, photocopying, long distance telephone calls, exhibit preparation, and videotaping;
- (7) Provide that offers of settlement in all tort actions in which claimed damages exceed \$25,000 may be made by either party from 120 days after filing of the defendant's initial responsive pleading to 60 days prior to trial and must be made in writing and left open for 60 days;
- (8) Award costs to the prevailing party, defined as the plaintiff if the plaintiff's net recovery is greater than the plaintiff's offer of settlement, and defined as the defendant if the plaintiff's net recovery is less than the defendant's offer of settlement. If the plaintiff's net recovery is between the parties' offers of settlement, neither party would pay the costs of the other party;
- (9) Permit a trial court, upon application, to extend the 60-day period for accepting or rejecting settlement offers consistent with an offer referring the cause to mediation;
- (10) Provide that a defendant would be jointly and severally liable for the amount of compensatory and noneconomic damages only if the defendant is found to bear 50% or more of the fault, and a defendant would not be jointly and severally liable for more than the percentage of punitive damages for which fault is attributed to the defendant by the trier of fact;
- (11) Add long-term care facilities licensed pursuant to Chapter 198 (Convalescent, Nursing, and Boarding Homes) to the definition of "health care provider" as used in Chapter 538 (Tort Actions Based on Improper Health Care);

DESCRIPTION (continued)

(12) Increase the cap on noneconomic damages from \$350,000 to \$400,000, remove the “per occurrence” language in order to overrule a Missouri Supreme Court decision, and eliminate the requirement that award limitations for noneconomic damages be adjusted annually for inflation;

(13) Limit civil damages recoverable against certain physicians, dentists, hospitals, and others to \$400,000 for care or assistance necessitated by traumatic injury and rendered in a hospital emergency room;

(14) Make it mandatory rather than discretionary that a court dismiss any medical malpractice claim for which the plaintiff fails to file the required supporting expert affidavit and limits extensions of time to file the affidavit to an additional 90 days. The proposal would also require the expert to be licensed in substantially the same profession and specialty as the defendant and allow any defendant to request that the court review the expert opinion to determine whether the expert meets the required qualifications;

(15) Prohibit statements, writings, or benevolent gestures expressing sympathy from being admissible as evidence of an admission of liability in a civil action. Statements of fault would be admissible;

(16) Authorize the filing of a “miscellaneous” case for the purpose of securing copies of health care records and detail what the petition should and should not contain;

(17) Include a severability clause; and

(18) Clarify that the provisions of the bill would only apply to causes of action filed after August 28, 2004.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Office of Administration
 – Administrative Hearing Commission
Office of State Courts Administrator
Department of Transportation
Department of Mental Health
Missouri Consolidated Health Care Plan
Department of Insurance
Department of Conservation

NOT RESPONDING

Department of Health and Senior Services

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
February 3, 2004