

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3380-09
Bill No.: SCS for HS for HCS for HB 1304
Subject: Civil Procedure; Courts; Health Care; Health Care Professionals; Evidence;
Physicians; Liability; Attorneys
Type: Original
Date: April 5, 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 7 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 Administration – Administrative Hearing Commission, Department of Mental Health, Department of Labor and Industrial Relations, Department of Insurance**, assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of Attorney General, Office of Administration – Division of Budget and Planning, Department of Health and Senior Services, Missouri Consolidated Health Care Plan**, and the **Department of Conservation** did not respond to Oversight’s request for fiscal impact. However, in response to a previous version of the proposal, officials assumed 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.

ASSUMPTION (continued)

Officials from the **Department of Transportation (MoDOT)** assume Section 537.067 of 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 ten or more percent at fault. In actions where there is the finding of liability for an intentional tort, all defendants shall be jointly and severally liable. If the plaintiff is more than fifty percent at fault, then defendants shall only be liable for their percentage of 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.

<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:

Detail the procedures for service of process, notice, or demand on a corporation (Section 355.176).

Prejudgement interest would be calculated 60 days after the demand or offer is received by certified mail return receipt. Such demands and offers would be in writing, accompanied by an affidavit from the claimant covering the legal theory and damages claimed, list the medical providers of the claimant, include other medical information and contain authorization to allow the other party to obtain employment and medical records, and be left open for 60 days. The trial court would determine whether prejudgement interest is awarded. Claims for prejudgement interest in tort actions would be calculated at an interest rate tied to the Federal Funds Rate, as established by the Federal Reserve Board, plus five percent. Claims for post-judgement interest in tort actions would be calculated at an interest rate tied to the Federal Funds Rate plus seven percent (Section 408.040).

Where the cause of action accrues in Missouri, venue in all tort actions, including torts for improper healthcare, would only be in county where cause of action accrued. If the cause did not accrue in Missouri, then venue would be in the county where an individual defendant resides or in the county where the defendant's registered agent is located or the county where the corporation has the largest number of employees for the past two years for corporate defendants. The county where the cause of action accrued would be defined to be the county where the plaintiff was first injured by the wrongful acts of the defendant. Motions to dismiss or to transfer based on a claim of improper venue would be granted if not denied within 90 days of filing, unless the time period is waived by all parties (Section 508.010).

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 (Section 510.263).

DESCRIPTION (continued)

Authorize the appointment of a peer review committee by the board of trustees or chief executive officer of a long-term care facility licensed under chapter 198, RSMo (Section 537.035).

In tort actions, other than intentional torts, a defendant would be jointly and severally liable for compensatory and noneconomic damages if the defendant is found to bear 10% or more of fault. In actions where there is a finding of liability for an intentional tort, the defendants would be jointly and severally liable. If the plaintiff is found to be 51% or more at fault, then there would be no joint and several liability. A defendant would only be liable for their percentage of fault for punitive damages. In all tort actions, a defendant would be jointly and severally liable for compensatory and noneconomic damages only if the defendant is found to bear 51% or more of the fault. A defendant would only be liable for their percentage of fault for punitive damages (Section 537.067).

Add long-term care facilities licensed pursuant to Chapter 198, RSMo, to the definition of "health care provider" as used in Chapter 538 (Section 538.205).

The cap on noneconomic damages for all plaintiffs would be lowered from its current inflation-adjusted cap of \$565,000 (adjusted from its base amount of \$350,000 in 1986) to \$350,000. There would be an inflation adjustment beginning on August 28, 2004. No plaintiff would recover more than \$350,000 regardless of the number of defendants. This section would also remove the words "per occurrence" to ensure a single cap and not multiple caps per incidents of medical malpractice as held by the court in *Scott v. SSM Healthcare*. The cap would apply to any person or entity that is a defendant in a lawsuit brought against a health care provider or that arises out of the rendering of health care services. No hospital or health care provider would be liable for actions of entity or person who is not an employee of such hospital or health care provider. Any spouse claiming loss of consortium would be considered the same plaintiff as their spouse. All persons and entities asserting a wrongful death claim would be considered one plaintiff (Section 539.210).

Require a court to dismiss any medical malpractice claim where the plaintiff fails to file an affidavit stating that he or she has obtained the written opinion of a legally qualified health care provider which states that the defendant failed to use reasonable care and such care caused plaintiff's damages. Currently, it is within the court's discretion to dismiss the case. The opinion of the health care provider would be subject to review by the court upon request of a defendant in order to ensure that the health care provider meets the qualifications to offer such opinion. The health care provider offering the opinion must be licensed in substantially the same profession and certified in substantially the same specialty as the defendant. The time for filing the affidavit could be extended for up to 90 days (Section 538.225).

DESCRIPTION (continued)

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 (Section 538.226).

The proposal would allow tort action judgments to bear interest at a rate equal to the coupon issue yield equivalent of the average accepted auction price for the last auction of the two-year U.S. Treasury Notes (Section 408.040 – HA 1).

The proposal would also repeal sections 508.040 (venue for corporations), 508.070 (venue for motor carriers), and 508.120 (disqualification of judge and change of venue).

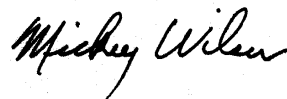
The proposal contains a severability clause (Section 1).

The proposal would clarify that the provisions would only apply to causes of action filed after August 28, 2004 (Section 2).

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 the Attorney General
Office of Administration
 – Administrative Hearing Commission
Office of State Courts Administrator
Department of Transportation
Department of Mental Health
Department of Health and Senior Services
Department of Labor and Industrial Relations
Missouri Consolidated Health Care Plan
Department of Insurance
Department of Conservation



L.R. No. 3380-09
Bill No. SCS for HS for HCS for HB 1304
Page 7 of 7
April 5, 2004

Mickey Wilson, CPA
Director
April 5, 2004