

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1188-04
Bill No.: HCS for HB 393
Subject: Courts; Health Care Professionals; Medical Insurance; Liability; Hospitals;
Physicians
Type: Original
Date: February 14, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Road	\$1,000,000 to Unknown	\$1,000,000 to Unknown	\$1,000,000 to Unknown
Tort Victims' Compensation	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Mental Health, Department of Public Safety – Director’s Office, Missouri Consolidated Health Care Plan, Department of Insurance, Department of Conservation,** and the **University of Missouri** assume the proposal would have no fiscal impact on their agencies.

In response to a previous version of the proposal (HB 393, LR # 1188-02), officials from the **Office of Administration – Division of Budget and Planning, – Administrative Hearing Commission, Department of Economic Development,** and the **Department of Health and Senior Services** assumed the proposal would have no fiscal impact on their agencies.

Officials from the **Office of the Attorney General** assume the cost of the proposed legislation could be absorbed within existing resources.

ASSUMPTION (continued)

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would make numerous civil procedure revisions which would have no fiscal impact on the courts. The proposal would also modify the allowable interest on certain judgments by tying it to the price of U.S. Treasury bills. The variable rate would have the potential effect of creating more litigation, but CTS has no way of calculating what that increase might be.

Officials from the **Department of Transportation (MoDOT)** assume in section 307.178, the percentage reduction in the amount of damages a claimant may recover in a tort judgment for failure to wear a seat belt in any claim involving motor vehicles is increased from one percent to fifty percent. This would likely have an unknown, but positive fiscal impact on Missouri Highways and Transportation Commission (MHTC)/MoDOT since public entities waive sovereign immunity for the negligent operation of motor vehicles by its employees.

The new language added in section 490.715, RSMo, which would allow all parties in a tort case to introduce evidence of the amount actually paid for medical treatment rendered that was reasonable, necessary and the proximate result of the alleged negligence. This would likely have a positive fiscal impact on MHTC/MoDOT.

In section 537.067.1, the doctrine of joint and several liability language is replaced with a strict comparative fault doctrine (a defendant shall only be responsible for the percentage of judgment for which the defendant is determined to be responsible by the jury); except that if one of the defendants is an employee of the other defendant and was acting as an employee of the defendant at the time of the action, with the right of contribution. This provision could be advantageous to MHTC/MoDOT.

Section 537.067.2 allows the jury to assess a percentage of fault to non-party defendants. In some cases, the plaintiff may sue a person with other party defendants and later settle out of court with them (sometimes for a nominal amount of money) and then dismiss them as a party defendant. This would leave the rest of the party defendants liable for the claim and, because of the doctrine of joint and several liability, this would make the defendants totally responsible for the damages determined by the jury. The provision in this legislation would allow a jury to make a determination and then assessment of the fault of even these non-party persons, thereby reducing the percentage of fault against the remaining defendants. This provision would have a significant positive fiscal impact on MHTC/MoDOT.

ASSUMPTION (continued)

These provisions shall have a positive fiscal impact on MHTC and MoDOT. The benefit would depend upon the number of cases impacted, the potential liability of MHTC in such cases and other related factors. A specific fiscal impact is difficult to estimate, however MoDOT believes it would be at least \$1,000,000 with the potential be more. Therefore the range of \$1,000,000 – positive unknown is used.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume the proposal would limit punitive damages in civil cases. Caps put on civil actions in housing discrimination cases would result in a loss of federal funds the Missouri Commission on Human Rights receives from the U.S. Department of Housing and Urban Development (HUD). DOLIR estimates the loss in federal funds to be \$359,788 per fiscal year.

DOLIR assumes the proposal would also have an impact on the Division of Workers' Compensation, which administers the Tort Victims' Compensation Fund. The proposal limits punitive damages in tort cases. A limit on punitive damages would reduce the amount of money that is deposited into the Tort Victims' Compensation Fund. However, since the deposits of money in the Fund have been sporadic over the last few years and it is impossible to determine the number of judgements where there will be punitive damages awarded, DOLIR is unable to determine an exact fiscal impact the proposal will have on future deposits into the Fund.

Oversight assumes the loss of federal funds from HUD is speculative. Therefore, Oversight has shown no fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
ROAD FUND			
<u>Savings</u> – Department of Transportation			
Liability limits	\$1,000,000 to <u>Unknown</u>	\$1,000,000 to <u>Unknown</u>	\$1,000,000 to <u>Unknown</u>
ESTIMATED NET EFFECT ON ROAD FUND	\$1,000,000 to <u>Unknown</u>	\$1,000,000 to <u>Unknown</u>	\$1,000,000 to <u>Unknown</u>

**TORT VICTIMS' COMPENSATION
 FUND**

Losses – Department of Labor and
 Industrial Relations

Reduced damages	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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**ESTIMATED NET EFFECT ON
 TORT VICTIMS' COMPENSATION
 FUND**

<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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FISCAL IMPACT - Local Government

FY 2006
 (10 Mo.)

FY 2007

FY 2008

\$0

\$0

\$0

FISCAL IMPACT - Small Business

The proposed legislation could have a fiscal impact on small businesses.

DESCRIPTION

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

1. Make failure to wear a safety belt could reduce the amount of the plaintiff's recovery by an amount not to exceed fifty percent of the damages awarded after any reductions for comparative negligence. (§307.178)

DESCRIPTION (continued)

2. Require prejudgment interest to be calculated 90 days after the demand or offer is received by certified mail, return receipt requested. The demand or offer must be in writing, be accompanied by an affidavit from the claimant describing 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 90 days. (§408.040)
3. Allow the introduction of evidence of the value of the medical treatment rendered and the proximate result of the negligence of any party. (§490.715)
4. Establish venue in all tort actions in which the cause of action accrued in Missouri, including torts for improper health care, in any county where the cause of action accrued. The proposal would establish the following venues in all tort actions in which the cause of action accrued outside Missouri: (a) For individual defendants, the venue would be in any county of the individual's principal place of residence; and (b) For corporate defendants, the venue would be in any county where the corporate defendant's registered agent is located or, if there are one or two plaintiffs and either was a resident of Missouri at the time the cause accrued, then the venue will be in any county of a plaintiff's principal place of residence. (§508.010)
5. Provisions of chapter 508 would prevail regarding any tort claim over Missouri rules of civil procedure. (§508.011)
6. Require all tort actions based upon improper health care tried before a jury involving punitive damages to be conducted in a bifurcated trial. (§510.263)
7. Establish no award of punitive damages against any defendant would exceed the greater of \$250,000 or three times the net amount of the judgment awarded to the plaintiff against the defendant. (§510.265)
8. Limit the amount of a supercede bond to \$25 million in all cases in which there is a count alleging a tort. (§512.099)
9. Specify that costs that may be assessed in civil actions include reasonable fees for travel, expert witnesses, videotaping, and photocopying. Parties are allowed to make a post-trial challenge as to the reasonableness and necessity of the fees. (§514.060)

DESCRIPTION (continued)

10. Change the statute of limitations on malpractice, error, or mistake from 10 years from the minor's 18th birthday. Currently it is 10 years from the minor's 20th birthday. (§516.105)
11. Authorize the appointment of a peer review committee by board of trustees or chief executive officer of a long-term care facility licensed under Chapter 198. A peer review committee could be comprised of and appointed by employed health care professionals of a University or entity affiliated with a university. (§537.035)
12. Eliminate joint liability and specify that in tort actions for damages, a defendant is responsible for the percentage of the judgment for which the defendant is determined to be responsible by the trier of fact. (§537.067)
13. Specify if the deceased not employed full time and was at least 50% responsible for the care of one or more minors or disabled persons, there would be a presumption that the value of the care provided, regardless of the number of persons cared for, is equal to 2/3 of the state average weekly wage. (§537.090)
14. Include long-term care facilities licensed under Chapter 198 RSMo, and manufacturers, wholesalers, or licensed distributors of drugs or devices approved by the federal Food and Drug Administration in the definition of "health care provider." Include exemplary damages and damages for aggravating circumstances in the definition of "punitive damages." (§538.205)
15. In failure to render health care services cases, lower the cap on non-economic damages for all plaintiffs to \$250,000, irrespective of the number of defendants. (§538.210)
16. Requires future medical payments to be made in an amount according to a schedule determined by the life expectancy of the person to whom the services were rendered, as determined by the court. The court must apply interest on future payments at an interest rate equal to the average auction price of a 52-week United States Treasury bill. (§538.220)
17. Require a court to dismiss any medical malpractice claim where the plaintiff or his attorney 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 that caused the plaintiff's damages. (§538.225)

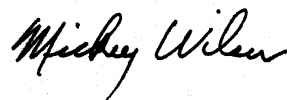
DESCRIPTION (continued)

18. Prohibit statements, writings, or benevolent gestures expressing sympathy made to the person or the family from being admitted into evidence. (§538.229)
19. Specify, for purposes of determining venue, that in any action against a health care provider for damages for personal injury or death arising out of the rendering of or failure to render health care services, the plaintiff will be considered injured by the health care provider in the county where the plaintiff first received treatment by a defendant for the medical condition at issue in the case. (§538.232)
20. Include a severability clause. (Section 1)
21. Clarify that the provisions of the bill, except for Section 512.099, will only apply to causes of action filed after August 28, 2005. (Section 2)
22. Specify that the judge will transfer the case to a proper forum if a plaintiff or defendant, including a third party plaintiff or defendant, is added or removed prior to trial which would alter the determination of venue if originally added or removed. (Section 3)

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
 – Division of Budget and Planning
Office of State Courts Administrator
Department of Economic Development
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
University of Missouri



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