

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1188-10
Bill No.: SS for SCS for HCS for HB 393 with SA 4, SA1 to SA 4, SA 5, SA 1 to SA 5, SA 6, SA 7, SA 9, and SA 11
Subject: Courts; Health Care Professionals; Medical Insurance; Liability; Hospitals; Physicians
Type: Original
Date: March 10, 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	More than \$1,000,000	More than \$1,000,000	More than \$1,000,000
Conservation	Unknown	Unknown	Unknown
Tort Victims' Compensation	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown) to More than \$1,000,000	(Unknown) to More than \$1,000,000	(Unknown) to More than \$1,000,000

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 **Office of Administration – Administrative Hearing Commission, Department of Economic Development, Department of Health and Senior Services, and the Department of Insurance** assume the proposal would have no fiscal impact on their agencies.

In response to a previous version of the proposal (SCS for HCS for HB 393, LR # 1188-08), officials from the and the **Missouri Consolidated Health Care Plan** and the **Department of Mental Health** 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.

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

ASSUMPTION (continued)

In response to a previous version of the proposal (SCS for HCS for HB 393, LR # 1188-08), officials from the **Department of Conservation (MDC)** assumed the proposed legislation would have a positive impact on MDC funds. The exact amount of impact is unknown.

Officials from the **Department of Transportation (MoDOT)** assume the new language added in Section 490.715, RSMo, 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 Missouri Highways and Transportation Commission (MHTC)/MoDOT.

Senate Amendment 11 amends the doctrine of joint and several liability so that if a jury determines that a defendant is less than 51% at fault, then such defendant is only responsible to pay for its percentage of fault. If a defendant is 51% or more at fault, then such defendant is jointly and severally liable for each and every defendant parties fault. In the case of punitive damages, a defendant is not liable for more than its percentage share of fault. This provision shall have a positive impact on MHTC/MoDOT. The amount is unknown, however expected to exceed \$1,000,000.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume the proposal would 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.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
ROAD FUND			
<u>Savings</u> – Department of Transportation			
Liability limits	More than <u>\$1,000,000</u>	More than <u>\$1,000,000</u>	More than <u>\$1,000,000</u>
ESTIMATED NET EFFECT ON ROAD FUND	More than <u>\$1,000,000</u>	More than <u>\$1,000,000</u>	More than <u>\$1,000,000</u>
CONSERVATION FUND			
<u>Savings</u> – Department of Conservation			
Liability Limits	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON CONSERVATION FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
TORT VICTIMS' COMPENSATION FUND			
<u>Losses</u> – Department of Labor and Industrial Relations			
Reduced damages reduce deposits	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON TORT VICTIMS' COMPENSATION FUND	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

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:

SUITS AGAINST NONPROFIT CORPORATIONS – Section 355.176 – The act repeals and reenacts section 355.176 regarding services of process in suits against nonprofit corporations.

INTEREST ON JUDGEMENTS – Section 408.040 – Prejudgement interest is calculated 90 days after the demand or offer is received by certified mail return receipt. Currently, it is calculated 60 days after the demand or offer is made. Such demands and offers must 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 90 days. The trial court shall award prejudgement interest if the conditions of this section are met. Claims for prejudgement interest in tort actions shall be calculated at an interest rate tied to the Federal Funds Rate, as established by the Federal Reserve Board, plus three percent. Claims for post-judgement interest in tort actions shall be calculated at an interest rate tied to the Federal Funds Rate plus five percent. If a claimant fails to file suit in circuit court within 120 days after the demand was received, then the court shall not award prejudgement interest to the claimant.

VALUE OF MEDICAL TREATMENT RENDERED – Section 490.715 – Parties may introduce evidence of the value of the medical treatment rendered to a party that was reasonable, necessary, and a proximate result of the negligence of any party.

VENUE – Section 508.010 – Where the cause of action accrues in Missouri, venue in all tort actions, including torts for improper healthcare, shall only be in the county where cause of action accrued. If the cause did not accrue in Missouri, then venue depends on whether there is an individual or corporate defendant. For an individual defendant, venue shall be in the county where an individual defendant resides or if the plaintiff resided in Missouri at the time the plaintiff was first injured, the county of the plaintiff's principal residence when the plaintiff was first injured. For a corporate defendant, venue shall be in either the county where the registered agent is located or, if the plaintiff resided in Missouri on the date of first injury, then the county containing the plaintiff's principal residence.

DESCRIPTION (continued)

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

PUNITIVE DAMAGES – Sections 510.263 – Tort actions based upon improper health care that are tried before a jury involving punitive damages shall be conducted in a bifurcated trial if requested by any party. "Punitive damage award" is defined to include an award for punitive or exemplary damages as well as an award for aggravating circumstances. Discovery of a defendant's assets only can occur after the trial court finds the plaintiff will have a submissible case for punitive damages.

SUPERSEDEAS BONDS – Section 512.099 – This section limits the amount of a supersedeas bond to \$50 million in all cases in which there is a count alleging a tort.

STATUTE OF LIMITATIONS IN ACTIONS AGAINST HEALTH CARE PROVIDERS – Section 516.105 – Currently, in no event may a suit be commenced after ten years from a minor's 20th birthday. The act changes it to five years from a minor's 18th birthday.

PEER REVIEW COMMITTEES – Section 537.035 – Authorizes 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. This addition has the effect of making records of nursing home quality assessment and assurance committees privileged and inadmissible in court.

JOINT AND SEVERAL LIABILITY – Section 537.067 – Eliminate joint liability and specify that in tort actions for damages, a defendant is responsible as follows: If the defendant is found to bear 51% or more of fault, then the defendant would be jointly and severally liable for the amount of judgment against defendants. If the defendant is found to bear less than 51% of fault, the defendant would only be responsible for the percentage of the judgment for which he is determined to be responsible by the trier of fact. The defendant would only be severally liable for the percentage of punitive damages for which fault is attributed to the defendant by the trier of fact.

WRONGFUL DEATH ACTIONS – Section 537.090 – For purposes of determining damages, if the deceased was not employed full time and was at least 50% responsible for the care of a minor, disabled person, or person over 65 years of age, then there shall be a rebuttable presumption that the weekly value of the care provided shall be calculated based on to 110% of the state average weekly wage.

DESCRIPTION (continued)

DEFINITION OF "HEALTH CARE PROVIDER" – Section 538.205 – Includes long term care facilities licensed under Chapter 198, RSMo, provided such long-term care facility has not been cited for violation of a class I standard under Section 198.085, RSMo, in the past 3 years. The definition of "punitive damages" shall include exemplary damages and damages for aggravating circumstances.

MEDICAL MALPRACTICE NONECONOMIC DAMAGES CAP – Section 538.210 – In action for failure to render health care services, no plaintiff would recover more than \$350,000 irrespective of the number of defendants. This limitation would apply to failure to render health care services suits in certain circumstances and all claims for contribution.

FAILURE TO RENDER HEALTH CARE SERVICES – Section 583.220 – A judgment would specify a future medical periodic payment schedule.

AFFIDAVIT OF MERIT – Section 538.225 – Requires 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 affidavit must state the name and address of the health provider offering the opinion. The health care provider offering the opinion must be licensed in the same profession and either practicing or within five year of retirement of practice in substantially the same specialty as the defendant. The time for filing the affidavit can be extended for up to 90 days.

PROVIDERS OF FREE HEALTH CARE SERVICE – Section 538.228 – Any physician who provides free health care services and is qualified as exempt from federal taxation, would not be liable for noneconomic damages for acts or omissions unless gross negligence or willful or wanton acts or unless the physician maintained, at the time of treatment, liability insurance coverage for such treatment. This excludes abortion services.

BENEVOLENT GESTURES – Section 538.229 – Prohibits statements, writings or benevolent gestures expressing sympathy made to the person or to the family of the person from being admitted into evidence.

DESCRIPTION (continued)

VENUE – Section 538.232 – 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 first injured only in the county where the plaintiff first received treatment by a defendant for the medical condition at issue in the case.

ACTIONS FOR IMPROPER HEALTH CARE – Section 538.300 – Sections 490.715, 510.263, and 637.067 would apply to tort actions based on improper health care. Sections 2 and 3 of the legislation would not apply to tort actions based on improper health care.

SEVERABILITY – Section 1 – Adds severability clause.

EFFECTIVE DATE OF ACT – Section 2 – Provides that the act shall apply to all cases filed after August 28, 2005.

CHANGE OF VENUE – Section 3 – If a plaintiff or defendant is added or removed from a petition and the addition or removal would alter the determination of venue, the judge shall, upon application of any party, transfer the case to a proper forum.

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

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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

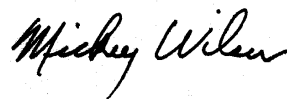
Department of Health and Senior Services

Department of Labor and Industrial Relations

Missouri Consolidated Health Care Plan

Department of Insurance

Department of Conservation



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Director

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