

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1742-04
Bill No.: HCS HB 629
Subject: Employees - Employers; Labor and Management; Workers Compensation
Type: Original
Date: April 5, 2007

Bill Summary: This proposal changes various laws relating to workers' compensation.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
General Revenue	\$194,022	\$194,022	\$194,022
Total Estimated Net Effect on General Revenue Fund	\$194,022	\$194,022	\$194,022

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Road Fund	Unknown	Unknown	Unknown
Second Injury 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 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Sections 287.020, 287.200 and 287.230

In response to a previous version of this legislation the following agencies and cities responded as follows:

Officials at the **Office of Administration's Risk Management** assume the proposed legislation appears to be in response to the recent Missouri Supreme Court decision Schoemehl v. Treasurer, MLW No. 55251, wherein the court ruled that permanent total disability benefits should be paid to surviving dependents of an injured employee after the employee dies, even if the death was unrelated to the work injury.

The State of Missouri's self-insured workers' compensation program, the Central Accident Reporting Office (CARO) covers state employees (excluding MoDOT, Missouri State Highway Patrol and University of Missouri systems). CARO is currently obligated to ongoing weekly benefits to 15 past state employees deemed to be permanently and totally disabled. Of these, 14 cases have the potential for extended dependent obligations at the time of death of the employee resulting from the Schoemehl decision. Currently CARO does not maintain dependent status on these 14 cases. In addition to these cases, CARO has identified an additional 13 cases that may result in permanent total disability in the very near future.

The U.S. Census Bureau indicates of the total households of one wage earner and two earners or more, single wage earner households account for 50% of the total. Applying the 50% to the 14 cases, 7 cases may be single wage earner households, thus at the time of death of the employee, the spouse may be a sole dependent. The average weekly compensation rate for these cases is \$243.61 multiplied by the 7 cases equate to \$1,705.27 in weekly benefits.

Of the additional 13 cases, 6.5 cases would be considered as possible single wage earner households with spouses as sole dependents. The average weekly compensation rate for these cases is \$311.38 multiplied by the 6.5 cases equate to \$2,025.92.

Combining the two sets, the total weekly obligation to extend benefits to sole dependents is \$3,731.19 or \$194,021.88 annually. The length of this obligation is difficult to assume. However assuming the employee should die of natural causes and that the spouse may be near the age of the employee, we are projecting 10 additional years for the remaining spouse. Therefore the savings would be for approximately 10 years for the cases identified. This does not take into consideration any minors that may be deemed to be sole dependents at time of the employee's death.

ASSUMPTION (continued)

While the state, to date, has not yet incurred any additional cost due to the Schoemehl decision, we do assume an annual cost savings of approximately \$194,022 to the State of Missouri with the proposed legislation that rejects and abrogates the Schoemehl ruling. No cost inflator is utilized in that weekly compensation rates remain the same throughout the period of obligation.

It is likely that some of the compensation for disability that was available from the Second Injury Fund would be pursued against the employer/insurer from the primary injury. Therefore there is the potential for increased cost to the state's self-insured workers' compensation program that cannot be determined at this time.

Officials at the **Missouri Department of Transportation (MoDOT)** assume the fiscal impact is unknown and would depend on the number of permanent total disability cases MoDOT would have in the future.

Officials at the **Office of the Attorney General** assume that any potential costs arising from this proposal can be absorbed with existing resources.

Officials at the **Department of Labor and Industrial Relations, Department of Elementary and Secondary Education, Department of Insurance, Financial Institutions and Professional Registration, St. Louis County, City of Centralia, Administrative Hearing Commission, City of Kansas City, Parkway School District and the City of West Plains** assume that there is no fiscal impact from this proposal.

Section 287.220 Termination of Second Injury Fund Claims

In response to similar legislation filed this year (HB 685) involving the termination of Second Injury Fund claims, the following agencies and cities responded as follows:

Officials at the **Department of Labor and Industrial Relations (DOLIR)** assume this bill prohibits the filing of a claim for benefits against the Second Injury Fund after January 1, 2008. In fiscal years 2000 through 2006 the Second Injury Fund paid benefits on 32,283 cases with payments totaling approximately \$339,210,623 in that time period. These benefit payments were for the benefit categories of permanent partial disability (\$212,966,679), permanent total disability (\$117,429,442), uninsured employer medical (\$4,492,894), second job wage loss (\$1,619,845), uninsured employer death (\$1,449,538), and physical rehabilitation (\$1,252,225). After January 1, 2008, depending upon the category of benefit claimed, benefit payments will probably be reduced gradually over time as claims are settled and paid. Some category benefits available from the Second Injury Fund have a longer life than others depending upon the

ASSUMPTION (continued)

complexities of the case and the determination of the parties involved as to the value of the case. For instance, a claim for permanent total disability historically takes longer to resolve than a claim for lost wages from a second job or rehabilitation benefits paid while the injured worker is receiving rehabilitation services. At the same time, the liabilities incurred by the Second Injury Fund for awards of Permanent Total Disability will be ongoing, usually for the life of the claimant, while benefits for Permanent Partial Disability benefits are paid in a lump sum and once the payment is made the case is closed.

The Division is unable to determine the potential savings to the Second Injury Fund. It is difficult to project savings because the dollar value of the cases in which permanent total disability benefits are owed are still open and unresolved. The life expectancy of the injured employee who is entitled to receive on-going lifetime permanent total disability benefits and other dependents who could possibly be entitled to receive permanent total disability benefits cannot be determined.

Additionally, the Division is unable at this time to determine how the recent Missouri Supreme Court decision in *Schoemehl v. Treasurer of the State of Missouri*, , _ S.W. 3d 2007 WL 58370 (Mo. 2007) will impact pay-outs for cases involving permanent total disability benefits over the long term.

Also, prior to January 1, 2008 when claims may no longer be filed against the Second Injury Fund, there may be an increase in the filing of claims against the Second Injury Fund. However, at some unknown point in the future, depending upon the life span of claims against the Second Injury Fund, the Second Injury Fund will have no liabilities once all cases are resolved and paid.

The fiscal impact of this bill on the Second Injury Fund can only be accurately determined from an actuarial study of the Second Injury Fund to determine future liability. It is important to note here that the State of Georgia eliminated its Second Injury Fund in 2006 by making legislative changes similar to this bill. An actuarial study done on Georgia's Second Injury Fund to determine liabilities of its fund showed that the liabilities of that fund would not be completely eliminated until the year 2040.

The Division does not receive any appropriations or funds from the Second Injury Fund for Full Time Employees [FTE]. The Division's responsibility under the existing statutory framework is ministerial in nature. The Division's FTEs who handle the payment of benefits and the collection of surcharge are paid through the workers' compensation administrative fund. The Division believes that eliminating the Second Injury Fund and a protracted spend down program will require one fund manager and a clerical position. The Division also assumes that elimination of

ASSUMPTION (continued)

the Second Injury Fund and a spend down program will require changes to the Division's computer system, the cost of which is unknown.

An actuarial study of the Second Injury Fund is needed to determine future liabilities of the Second Injury Fund including pay-outs and spend down costs and determine the number of years until the spend down of the Fund is completed. Based on the cost of the previous actuarial study conducted on the Second Injury Fund, the Division estimates that the cost of an expanded actuarial study for the purposes described herein would be approximately \$75,000 to \$100,000.

Officials at the **Office of the Attorney General (AGO)** assume that this proposal creates no fiscal impact at this time as there will be a large open Second Injury Fund caseload to defend into the foreseeable future. AGO assumes that there will be potential cost savings in the long term.

Officials at the **Office of Administration (OA)** assume that some of the compensation for disability that was available from the Second Injury Fund would be pursued against the employer/insurer from the primary injury. Therefore there is the potential for increased cost to the state's self-insured workers' compensation program that cannot be determined at this time.

Officials at the **Office of the State Treasurer** assume FY 2009 no impact. FY 2010 and all future fiscal years - STO's appropriation and FTE from the Second Injury Fund must transfer to the State Treasurer's General Operations Fund (#0164) which includes (PS \$37,875; E&E \$3,280; and Associated Fringe \$14,608). Net impact of \$55,763.00 plus .65 FTE will transfer from the Second Injury Fund to the Treasurer's General Operations Fund. (This will be allocated proportionately as a retention of interest earnings on state funds in accordance with Section 30.605 RSMo). The FTE would be assigned additional duties and work would be re-allocated internally.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

ASSUMPTION (continued)

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials at the **Department of Economic Development, Administrative Hearing Commission** and the **Department of Insurance, Financial Institutions and Professional Registration** assume that there is no fiscal impact from this proposal.

Section 290.584 Employment-at-will doctrine

Officials at the **Department of Labor and Industrial Relations** assume no fiscal impact from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2008 (10 Mo.)	FY 2009	FY 2010
GENERAL REVENUE			
<u>Savings</u> - General Revenue			
Compensation payment savings	<u>\$194,022</u>	<u>\$194,022</u>	<u>\$194,022</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>\$194,022</u>	<u>\$194,022</u>	<u>\$194,022</u>
ROAD FUND			
<u>Savings</u> - Road Fund			
Compensation payment savings	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON ROAD FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
SECOND INJURY FUND			
<u>Savings</u> - Second Injury Fund			
Prohibition of filing a claim	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON SECOND INJURY FUNDS	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

FISCAL IMPACT - Local Government

FY 2008
(10 Mo.)

FY 2009

FY 2010

\$0

\$0

\$0

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This bill specifies that in applying the provisions of the Workers' Compensation Law it is the intent of the legislature to reject and abrogate Schoemehl v. Treasurer of the State of Missouri, 2007 WL58370 and all cases citing, interpreting, applying, or following this case. The bill reaffirms that the right for compensation for permanent total disability of an injured employee terminates on the date of the injured employee's death.

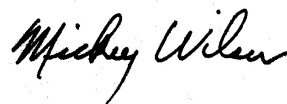
This bill specifies that no person will be eligible to receive benefits from the Second Injury Fund for injuries occurring on or after January 1, 2008. The Division of Workers' Compensation within the Department of Labor and Industrial Relations will compute the amount of money needed to award benefits to persons injured prior to January 1, 2008, and assess employers as specified by law.

This bill codifies the employment-at-will doctrine.

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

Department of Labor and Industrial Relations
Department of Insurance, Financial Institutions & Professional Registration
City of West Plains
St. Louis County
Department of Elementary and Secondary Education
Office of Administration
 Risk Management
City of Kansas City
Administrative Hearing Commission
City of Centralia
Parkway School District
Office of the Attorney General
Department of Transportation
Office of the Secretary of State
Office of the State Treasurer
Department of Economic Development



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