

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1051-01  
Bill No.: HB 460  
Subject: Employees - Employers; Department of Labor and Industrial Relations; Labor and Management; Taxation and Revenue - General  
Type: Original  
Date: February 9, 2015

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Bill Summary: This proposal changes the laws regarding employment taxes.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Worker's Compensation	(\$151,245)	(\$151,245)	(\$151,245)
Second Injury Fund	(\$907,469)	(\$907,469)	(\$907,469)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(\$1,058,714)</b>	<b>(\$1,058,714)</b>	<b>(\$1,058,714)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 7 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
UI Administration Fund	\$0 or (\$38,000,000)	\$0 or (\$38,000,000)	\$0 or (\$38,000,000)
Wagner Peyser Fund	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 or (\$50,000,000)</b>	<b>\$0 or (\$50,000,000)</b>	<b>\$0 or (\$50,000,000)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## **FISCAL ANALYSIS**

### **ASSUMPTION**

**Oversight** was unable to receive some of the agency responses in a timely manner due to the short fiscal note request time. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

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

Officials from the **Office of Administration - Division of Personnel** and the **Office of the State Courts Administrator** each assume the proposal will have no fiscal impact on their respective organizations.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** stated the United States Department of Labor (USDOL) has informally reviewed this bill and has determined it raises several conformity issues with federal law.

DOLIR officials state the proposed change requires that the DOLIR afford employers the same relief afforded to employers under the "safe harbor" provision. The safe harbor provision is solely a tax relief provision. It does not amend the definition of "employee" under the Unemployment Tax Act (FUTA), which determines the scope of the mandatory coverage requirement, for purposes of determining an employer-employee relationship. Internal Revenue Service (IRS) states that the safe harbor provision does not change the status of these workers from employees to self-employed.

Missouri is not permitted to offer the same relief as provided in the "safe harbor" provision, since this would permit Missouri to deny unemployment compensation (UC) coverage when such services are performed in an employment relationship for state and local governmental entities, certain nonprofit organizations, and federally recognized Indian tribes. The denial of coverage in these circumstances would raise a conformity issue because services performed in an employment relationship for these entities are required to be covered.

ASSUMPTION (continued)

Section 3303(a)(1), FUTA, requires, as a condition for employers in a state to receive the additional credit against the federal tax, that state law provide:

*"no reduced rate of contributions to a pooled fund is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk...."*

If the application of the safe harbor provision would be to relieve employers of liability for state UC taxes even though services are required to be covered under the state UC law, this would "forgive" the back taxes of employers where there was coverage. If the issue is "forgiving" taxes otherwise due, then an issue would be raised with the experience rating since the forgiveness of taxes otherwise due results in the assignment of a zero tax rate on those services, which has the result of providing a reduced rate of tax on a basis not related to the experience of the employer.

This bill will create a conformity issues with the Federal UC laws. Non-conformity with federal law could jeopardize the certification of Missouri's unemployment insurance (UI) program. If the program fails to be certified, Missouri would lose approximately \$38 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri would lose the approximately \$12 million in federal funds each year the Department of Economic Development, Division of Workforce Development uses for Wagner-Peyser reemployment services.

Lastly, the classification of some workers as independent contractors based on IRS determinations (even though DOLIR would not reach the same conclusion based on state law) would mean that employers would no longer be required to provide those individuals with workers' compensation coverage. With lower premium collections overall, the amount of taxes and surcharges collected by the State of Missouri to fund the Workers' Compensation Program and the Second Injury Fund would decrease in a parallel fashion.

Though it is uncertain exactly how many fewer workers would be classified as covered employees, any decrease in the premium base would result in a corresponding decrease in state revenues collected as a percentage of the premium base. For the purpose of this fiscal estimate, DOLIR assumes the premium base would decrease 1%, or \$15,124,480. Based on this amount, the Admin Tax collected would decrease by \$151,245 and the Second Injury Surcharge collections would decrease by \$907,469. The total loss in state funding would be an estimated \$1,058,714.

ASSUMPTION (continued)

**Oversight** assumes the proposed language may result in conformity issues with federal law. Oversight will range the loss of federal funds from \$0 (the proposal would be implemented in a way that does not conflict with federal technical requirements) or the amount estimated by DOLIR, \$38 million (Missouri fails to comply with federal regulations) to the Unemployment Insurance Administration Fund and \$0 or \$12 million to the Wagner Peyser Fund.

Although it is uncertain how many fewer workers would be classified as worker's compensation covered employees, any decrease in the premium base would result in a corresponding decrease in state revenues. For fiscal note purposes, Oversight will use DOLIR estimates of a 1% loss in the premium base of \$151,245 to the Workers' Compensation Fund and a loss of \$907,469 to the Second Injury Fund.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
<b>WORKERS' COMPENSATION FUND</b>			
<u>Loss - DOLIR</u>	<u>(\$151,245)</u>	<u>(\$151,245)</u>	<u>(\$151,245)</u>
Lower WC premium collections (1% decrease in premium base)			
<b>ESTIMATED NET EFFECT TO THE WORKERS' COMPENSATION FUND</b>	<b><u>(\$151,245)</u></b>	<b><u>(\$151,245)</u></b>	<b><u>(\$151,245)</u></b>
<b>SECOND INJURY FUND</b>			
<u>Loss - DOLIR</u>	<u>(\$907,469)</u>	<u>(\$907,469)</u>	<u>(\$907,469)</u>
Lower WC premium collections (1% decrease in premium base)			
<b>ESTIMATE NET EFFECT TO THE SECOND INJURY FUND</b>	<b><u>(\$907,469)</u></b>	<b><u>(\$907,469)</u></b>	<b><u>(\$907,469)</u></b>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2016 (10 Mo.)	FY 2017	FY 2018
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**UNEMPLOYMENT  
ADMINISTRATION FUND**

<u>Loss - DOLIR</u>	\$0 or	\$0 or	\$0 or
Potential non-conformity with federal law	<u>(\$38,000,000)</u>	<u>(\$38,000,000)</u>	<u>(\$38,000,000)</u>

<b>ESTIMATED NET EFFECT TO THE UNEMPLOYMENT ADMINISTRATION FUND</b>	<b>\$0 or <u>(\$38,000,000)</u></b>	<b>\$0 or <u>(\$38,000,000)</u></b>	<b>\$0 or <u>(\$38,000,000)</u></b>
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**WAGNER PEYSER FUND**

<u>Loss - DOLIR</u>	\$0 or	\$0 or	\$0 or
Potential non-conformity with federal law	<u>(\$12,000,000)</u>	<u>(\$12,000,000)</u>	<u>(\$12,000,000)</u>

<b>ESTIMATED NET EFFECT TO THE WAGNER PEYSER FUND</b>	<b>\$0 or <u>(\$12,000,000)</u></b>	<b>\$0 or <u>(\$12,000,000)</u></b>	<b>\$0 or <u>(\$12,000,000)</u></b>
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<u>FISCAL IMPACT - Local Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
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<u><b>\$0</b></u>	<u><b>\$0</b></u>	<u><b>\$0</b></u>
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FISCAL IMPACT - Small Business

Direct fiscal impact to small businesses would be expected as a result of this proposal.

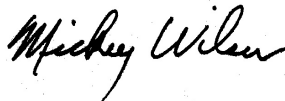
### FISCAL DESCRIPTION

This bill provides that for a taxpayer undergoing an audit by the Department of Labor and Industrial Relations regarding classification of an individual as an independent contractor or employee, if the taxpayer has been granted relief from the imposition of federal employment taxes under Section 530 of the Internal Revenue Code of 1986, as amended, for an individual, with the result that the taxpayer can continue to classify the individual as an independent contractor for purposes of federal employment taxes, the department must allow the taxpayer to classify the individual as an independent contractor for purposes of Missouri employment taxes.

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  
Office of Administration  
Attorney General's Office  
Office of the State Courts Administrator



Mickey Wilson, CPA  
Director  
February 9, 2015

Ross Strobe  
Assistant Director  
February 9, 2015