

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1802-01
Bill No.: HB 890
Subject: Courts; Liability
Type: Original
Date: February 17, 2017

Bill Summary: This proposal creates and modifies provisions relating to punitive damages.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue	(\$270,359)	(\$290,851)	(\$293,885)
Total Estimated Net Effect on General Revenue	(\$270,359)	(\$290,851)	(\$293,885)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Tort Victims' Compensation Fund	\$0 to \$458,000	\$0 to \$458,000	\$0 to \$458,000
Legal Expense Fund	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (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 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Federal Funds	\$0 or (\$1,149,985)	\$0 or (\$1,149,985)	\$0 or (\$1,149,985)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$1,149,985)	\$0 or (\$1,149,985)	\$0 or (\$1,149,985)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue	4 FTE	4 FTE	4 FTE
Federal Funds	0 or (22 FTE)	0 or (22 FTE)	0 or (22 FTE)
Total Estimated Net Effect on FTE	4 FTE or (18 FTE)	4 FTE or (18 FTE)	4 FTE or (18 FTE)

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

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the Attorney General's Office (AGO) did not respond to our request for fiscal impact. However, in response to legislation addressing similar issues from 2016, HB 2458, AGO assumed this proposal authorizes the AGO with the sole jurisdiction to prosecute the amount of punitive damages in every case throughout the state wherein punitive damages are in controversy. Although the exact number of cases and the amount of potential recovery of costs is unknown, the AGO anticipated that there could be a significant number of new cases that it would handle as the result of this proposal. Those cases would require significant investigation and detailed preparation for litigation. Accordingly, while the precise fiscal impact is unknown, the AGO estimates that it would require at least an additional 3 FTE Assistant Attorney Generals (AAG I) and 1 FTE paralegal. The AGO may seek additional appropriations if the workload created by this proposal necessitates additional resources.

In response to legislation addressing the same issues from 2016, HB 2458, officials at the **Office of Administration's Division of General Services (OA)** assumed this proposal creates additional procedural and legal steps for seeking punitive or exemplary damages by requiring the claimant to first obtain an order by the court allowing an amended pleading including a claim for punitive or exemplary damages. Further, it appears the court may allow the amendment only if there is a probability that the claimant will prevail on the claim for punitive or exemplary damages.

OA-General Services understands, and therefore assumes, that this procedural and legal standard creates a somewhat higher burden on plaintiffs seeking punitive or exemplary damages. This higher burden may result in either fewer claims for punitive damages being made against state agencies or employees, or in more successful legal defense against such claims, either of which could result in potential savings to the Legal Expense Fund.

However, the amount of the potential savings resulting from this proposal cannot be reasonably estimated as this language creates a new legal standard, subject to judicial interpretation, and there is no readily available information that could assist in forming a rational basis for estimating savings. In addition, the number of potential claims, the severity of those claims, and the ultimate costs associated with any settlement or judgment resulting from those claims cannot be forecasted with any degree of assurance to their accuracy.

The proposal, in 510.263, gives sole authority to the Attorney General "to prosecute in the name of the plaintiff in a second stage of trial before another jury, the amount of punitive damages to be awarded against the defendant." OA-General Services understands, and therefore assumes, that this change could create a conflict of interest for the Attorney General in cases wherein his

ASSUMPTION (continued)

office has represented the defendant. In this event, it might be necessary to hire outside counsel, thus increasing legal costs for the Legal Expense Fund.

The state self-assumes its own liability under the State Legal Expense Fund section 105.711 RSMo. It is a self-funding mechanism whereby funds are made available for the payment of any claim or judgment rendered against the state in regard to the waivers of sovereign immunity or against employees and specified individuals. Investigation, defense, negotiation or settlement of such claims is provided by the Office of the Attorney General. Payment is made by the Commissioner of Administration with the approval of the Attorney General.

In response to legislation addressing the same issues from 2016, HB 2458, officials at the **Department of Labor and Industrial Relations (DOLIR)** assumed the following:

Missouri Commission on Human Rights

Changes in Section 510.262 regarding the level of proof required for punitive damages and the actions required by employers to be assessed punitive damages could cause the Missouri Commission on Human Rights (MCHR) to lose its contracts with both the Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development (HUD). The current contract with EEOC is \$761,300 and the current contract with HUD is \$388,685. The funds from these two contracts comprise 66% of MCHR's budget and fund 21.7 of its 32.7 FTE. The loss of these funds and employees would seriously compromise MCHR's ability to carry out its statutory mission, and a backlog of complaints would quickly develop. MCHR sent this proposal to the EEOC and HUD and has not received a response currently. The estimated fiscal impact to MCHR is up to (\$1,149,985) federal funds and (21.7) FTE.

Oversight assumes there will be a loss of 22 FTE if there is a loss in contracts between the EEOC and HUD.

Tort Victims' Compensation Fund

Section 537.675.3 raises the lien amount for deposit into the Tort Victims' Compensation Fund (TVCF) from 50% to 85% of the punitive damage final judgment, less Attorney General's Office (AGO) costs and expenses so long as no less than 50% of the punitive damage final judgment is deposited into the TVCF.

For the purpose of this fiscal note, DOLIR estimates that the AGO's expenses will amount to 10% of the judgment, on average, so the total amount deposited to the TVCF could be up to 75% of the judgment. Deposits to the TVCF currently represent 50% of the punitive damage award. The 10 year annual average of deposits into the TVCF is \$916,000. This represents 50% of the average annual punitive damage final judgments (\$916,000/50%) or \$1,832,000. Assuming that punitive damage final judgments triggering Section 537.675 will remain consistent with the annual average of the last 10 years, it is estimated that an increase of up to 25% of the annual

ASSUMPTION (continued)

average punitive damage final judgments of \$1,832,000 (25% x \$1,832,000) or \$458,000 could be deposited to the TVCF annually.

However, this assumption is subject to significant question because the increased percentage of punitive damage awards going to TVCF will result in lower distributions to the parties to the suit. This could further encourage settlements, meaning fewer cases will go to trial with resulting punitive damage awards and cases that do result in punitive damage awards will result in post-trial settlements that give up the right to the punitive damage award.

Therefore, DOLIR estimates the annual fiscal impact to be an increase of \$0 to \$458,000 in the TVCF. In each fiscal year, 26% of the awards received are transferred to the Basic Civil Legal Services Fund and 74% is distributed to uncompensated tort victims. If there is an increase in the Tort Victims' Compensation Fund collections, additional funding will be available for individuals seeking legal services and for uncompensated tort victims.

Officials at the **Office of the State Public Defender**, the **Office of the State Treasurer** and the **Office of Prosecution Services** each assume no fiscal impact to their respective agencies from this proposal.

In response to legislation addressing the same issues in 2016, HB 2458, officials at the **Office of the State Courts Administrator** assumed no fiscal impact from this proposal.

In response to similar legislation from 2015, officials at the **Department of Corrections** assumed no fiscal impact from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
GENERAL REVENUE			
<u>Cost - AGO</u>			
Personal Service	(\$139,422)	(\$168,980)	(\$170,669)
Fringe Benefits	(\$71,730)	(\$86,533)	(\$86,995)
Equipment and Expense	(\$59,207)	(\$35,338)	(\$36,221)
<u>Total Costs - AGO</u>	<u>(\$270,359)</u>	<u>(\$290,851)</u>	<u>(\$293,885)</u>
FTE Change - AGO	4 FTE	4 FTE	4 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$270,359)</u>	<u>(\$290,851)</u>	<u>(\$293,885)</u>
Estimated Net FTE Change for General Revenue Fund	4 FTE	4 FTE	4 FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2018 (10 Mo.)	FY 2019	FY 2020
FEDERAL FUNDS			
<u>Loss</u> - DOLIR - of contracts to the MCHR from the EEOC and HUD	\$0 or <u>(\$1,149,985)</u>	\$0 or <u>(\$1,149,985)</u>	\$0 or <u>(\$1,149,985)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	\$0 or <u>(\$1,149,985)</u>	\$0 or <u>(\$1,149,985)</u>	\$0 or <u>(\$1,149,985)</u>
Estimated Net FTE Change for Federal Funds	0 or (22 FTE)	0 or (22 FTE)	0 or (22 FTE)
LEGAL EXPENSE FUND			
<u>Savings</u> - OA - fewer claims files for punitive damages	Unknown	Unknown	Unknown
<u>Costs</u> - OA - more use of contract attorneys due to AGO conflict of interest	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON LEGAL EXPENSE FUND	Unknown to <u>(Unknown)</u>	Unknown to <u>(Unknown)</u>	Unknown to <u>(Unknown)</u>
TORT VICTIMS' COMPENSATION FUND			
<u>Revenue</u> - increase to fund from punitive damage award amounts	<u>\$0 to \$458,000</u>	<u>\$0 to \$458,000</u>	<u>\$0 to \$458,000</u>
ESTIMATED NET EFFECT ON TORT VICTIMS' COMPENSATION FUND	<u>\$0 to \$458,000</u>	<u>\$0 to \$458,000</u>	<u>\$0 to \$458,000</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This could have a direct fiscal impact to small businesses as a result of this proposal.

FISCAL DESCRIPTION

This bill specifies that in any action seeking recovery of punitive damages, the claimant must prove by clear and convincing evidence that the party against whom the claim for punitive damages is asserted intentionally performed a wrongful act with actual knowledge that the act was wrongful, engaged in a negligent act or failure to act that created a high probability of injury and evidenced a conscious disregard for the rights or safety of others, or with actual knowledge placed a defective product in the stream of commerce.

In addition, no punitive damages can be awarded unless there is an award of actual damages, against an employer or principal because of the act or conduct of an employee or agent unless certain specified conditions are met, or if the party demonstrates substantial compliance with an applicable statute, regulation or standard. No petition or other pleading can be filed containing a claim for punitive damages. The court may grant leave to file a claim for punitive damages, upon the filing of a written motion with documentation by a claimant, after making a finding by clear and convincing evidence that the standards for a punitive damage award have been met.

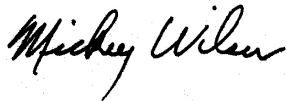
In the first stage of a bifurcated jury trial involving a claim for punitive damages the jury will determine whether a party should be liable for a punitive damage award. If a jury finds a party liable for punitive damages, the circuit clerk has ten days to provide written notice to the Attorney General. The Attorney General shall have sole authority to prosecute in the name of the plaintiff the punitive damages phase of a trial as a separate case in front of a new jury. The Attorney General is prohibited from hiring outside legal counsel, except in a case of demonstrable conflicts of interest and requires the outside counsel to only be paid a reasonable hourly rate for work completed.

Eighty-five percent of all moneys collected from this stage will be deposited into the Missouri Tort Victims Compensation Fund. The Attorney General may petition the court for costs and expenses provided that no less than 50% of the award is deposited in the Tort Victims Compensation Fund. The provisions of this bill apply to any civil action pending on or filed after August 28, 2017.

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 the State Courts Administrator
Office of the State Public Defender
Office of Prosecution Services
Department of Labor and Industrial Relations
Office of Administration
 Division of General Services
Department of Corrections
Office of the State Treasurer



Mickey Wilson, CPA
Director
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Ross Strobe
Assistant Director
February 17, 2017