

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1802-02
Bill No.: HCS for HB 890
Subject: Courts; Liability
Type: Original
Date: March 3, 2017

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

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 \$506,174	\$0 to \$506,174	\$0 to \$506,174
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 (\$1,201,900)	\$0 or (\$1,201,900)	\$0 or (\$1,201,900)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$1,201,900)	\$0 or (\$1,201,900)	\$0 or (\$1,201,900)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue	4 FTE	4 FTE	4 FTE
Total Estimated Net Effect on FTE	4 FTE	4 FTE	4 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.

Officials at the **Office of Administration's Division of General Services (OA)** assume 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.

Officials at the **Department of Labor and Industrial Relations (DOLIR)** assume the following:

Missouri Commission on Human Rights (MCHR)

Conformity issues with the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD) are possible. These federal agencies have determined that the Missouri Human Rights Act is substantially equivalent to the federal civil rights laws they enforce. If the EEOC and/or HUD were to determine Missouri was not in conformity with federal requirements, the MCHR could lose the ability to continue contracting with the EEOC for \$781,900 and/or HUD for \$420,000. The combined loss of \$1,201,900 would eliminate funding for 21.4 of MCHR's 32.7 FTE. MCHR could lose all of the federally funded FTE, 65% of its staff. Losing 65% of its employees would seriously compromise MCHR's ability to carry out its statutory mission properly. A backlog of complaints would most likely develop.

The fiscal impact to MCHR was calculated using the current EEOC and HUD contract amounts.

Tort Victims' Compensation Fund (TVCF)

Section 537.675

The amount of revenue collected for the TVCF could increase because of the increase in the percentage of punitive damages that must be deposited into the fund; however, there may be more private settlements in order to avoid the lien the State of Missouri has on punitive damage awards. Because damages can vary drastically from year to year, it is difficult to predict the amount of revenue the TVCF would receive. Between FY 2010 and FY 2016, total annual deposits have ranged from \$25,500 to \$3.3M. Using the yearly average revenue of \$723,105, DOLIR estimates an increase in deposits to the fund from \$0 to \$506,174 ($\$723,105 \div .50$ [current percentage] = \$1,446,210 [total punitive damages]; $\$1,446,210 \times .85$ [new percentage] = \$1,229,278.50; $\$1,229,278.50 - \$723,105 = \$506,174$ net increase).

Officials at the **Office of the State Treasurer**, the **Department of Corrections**, the **Office of the State Public Defender**, the **Office of Prosecution Services** and the **Office of the State Courts Administrator** each assume no fiscal impact to their respective agencies 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
FEDERAL FUNDS			
<u>Loss - DOLIR - of contracts to the MCHR from the EEOC and HUD</u>	\$0 or <u>(\$1,201,900)</u>	\$0 or <u>(\$1,201,900)</u>	\$0 or <u>(\$1,201,900)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0 or (\$1,201,900)</u>	<u>\$0 or (\$1,201,900)</u>	<u>\$0 or (\$1,201,900)</u>
LEGAL EXPENSE FUND			
<u>Savings - OA - fewer claims files for punitive damages</u>	Unknown	Unknown	Unknown
<u>Costs - OA - more use of contract attorneys due to AGO conflict of interest</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON LEGAL EXPENSE FUND	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>

<u>FISCAL IMPACT - State Government</u>	FY 2018	FY 2019	FY 2020
(continued)	(10 Mo.)		

TORT VICTIMS' COMPENSATION FUND

<u>Revenue</u> - increase to fund from punitive damage award amounts	<u>\$0 to \$506,174</u>	<u>\$0 to \$506,174</u>	<u>\$0 to \$506,174</u>
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ESTIMATED NET EFFECT ON TORT VICTIMS' COMPENSATION FUND	<u>\$0 to \$506,174</u>	<u>\$0 to \$506,174</u>	<u>\$0 to \$506,174</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2018	FY 2019	FY 2020
	(10 Mo.)		
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal could have a direct fiscal impact on small businesses involved in actions seeking punitive damages.

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.

FISCAL DESCRIPTION (continued)

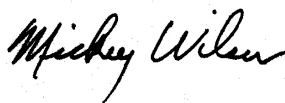
In the first stage of a bifurcated jury trial involving a claim for punitive damages the jury will determine whether a party should be liable for a punitive damage award. If a jury finds a party liable for punitive damages, the circuit clerk has ten days to provide written notice to the Attorney General. 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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