

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3899H.011
 Bill No.: HB 1531
 Subject: Workers Compensation; Labor and Management; Employees - Employers;
 Department of Labor and Industrial Relations
 Type: Original
 Date: March 5, 2024

Bill Summary: This proposal modifies provisions relating to the liability of employers.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
General Revenue*	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

*Depending upon future litigation resulting from the proposed changes, Oversight assumes the fiscal impact to the state could potentially exceed the \$250,000 threshold.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Legal Expense Fund (0692)*	\$0	\$0	\$0
Other State Funds**	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Colleges and Universities	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
State Road Fund (0320)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>Other State Funds</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

Numbers within parentheses: () indicate costs or losses.

*Transfers-in and increased Payments net to zero.

**Depending upon future litigation resulting from the proposed changes, Oversight assumes the fiscal impact to the state could potentially exceed the \$250,000 threshold.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Various Federal Funds*	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

*Depending upon future litigation resulting from the proposed changes, Oversight assumes the fiscal impact to the state could potentially exceed the \$250,000 threshold.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Total Estimated Net Effect on FTE	0	0	0

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Local Government	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Attorney General's Office** did not respond to **Oversight's** request for fiscal impact for this proposal.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** note:

It is assumed that the Division of Workers' Compensation can absorb the costs of this bill with current resources. However, if the workload significantly increased or other legislation was enacted, additional resources would be requested through the appropriation process.

DOLIR notes there would be an unknown impact to the Department as a result of the increased liability amounts found in Section 537.610. The amount of impact is unknown and determined by the number of safety violations, which result in workers' compensation cases.

Oversight notes that DOLIR assume it could absorb the cost arising from the proposal to the Division of Workers' Compensation.

Oversight notes the DOLIR is provided with core funding to handle a certain amount of activity each year. Oversight assumes DOLIR could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, DOLIR could request funding through the appropriation process.

Officials from the DOLIR assume the proposal will have a direct fiscal impact on their organization due to the potential violations specified in §537.610. Oversight does not have any information to the contrary. Therefore, **Oversight** will reflect a zero (court find no safety violation) to unknown impact in the fiscal note for DOLIR.

Officials from the **Missouri Department of Transportation (MODOT)** note:

This bill could require MoDOT/MHTC to pay higher costs associated with Workers Compensation. Further, the bill waives sovereign immunity by allowing for punitive damages if a plaintiff shows a violation of a safety standard.

This bill would amend 287.120, RSMo. to increase the amount an injured worker could claim from Workers Compensation when the injury was caused by the employer failing to follow a statute or lawful order. The amount would be increased from 15% to between 15 and 50%. It would also expand the opportunity to apply this section from where an employer ignored a statute or order to all situations where an employer ignored a statute and/or order, as well as safety standards issued by the employer or the occupational safety and health administration.

A further change would prevent any cause of action arising from the injury or death of an unborn child from being limited by the workers compensation statute.

The bill would also increase the burial expenses paid under Workers Compensation from \$5,000 to \$15,000 while at the same time removing language that required limiting fees.

This bill would also increase the statutory sovereign immunity limits in 537.610, RSMo. Generally, all per occasion limits would be \$4 million and per person limits would be set to \$500,000. The provision would also allow for punitive or exemplary damages to be awarded against a public entity if “plaintiff shows by clear and convincing evidence that the public entity violated” a safety standard promulgated by law, order, or regulation.

These changes will likely cause significant negative fiscal impact to the State Road Fund.

Oversight notes the **MODOT** assume significant fiscal impact stemming from the proposal. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero to Unknown impact in the fiscal note.

Officials from the **Office of Administration (OA)** note:

§287.120.4 – This bill proposes changing the safety violation penalty against an employer from 15% to at least 25% but not more than 50%. This could potentially increase costs to the state if the state were found to have violated a safety rule or standard in a workers’ compensation case. This bill also adds a provision that an employer could incur a penalty for an injury or death caused by the failure of the employer to comply with an OSHA safety standard. Potential costs to the state are unknown; as, it would depend on the facts and circumstances of each case and judicial interpretation.

§287.240 – This provision increases the workers’ compensation benefit for burial expenses from five to up to fifteen thousand dollars. This would increase expenses to the state in workers’ compensation cases where burial benefits are due. Potential costs to the state are unknown; as, it would depend on the facts and circumstances of each case.

§537.610 – This legislation increases the limit of liability of the state from two to four million on claims within the scope of 537.600 to 537.650 and from three to five hundred thousand for any one person in a single accident. This has the potential to increase costs to the Legal Expense Fund (LEF) but would depend on the facts of each case; therefore, the total impact is unknown.

§537.610.3 - This legislation adds punitive or exemplary damages in cases where a safety standard is violated. This has the potential to increase costs against the state but would be subject to judicial interpretation; therefore, potential costs to the state are unknown.

Officials from the **Department of Natural Resources (DNR)** defer to the OA for the potential fiscal impact of this proposal.

Officials from the **Department of Commerce and Insurance** and the **Missouri Department of Conservation** both assume the proposal will have no fiscal impact on their organization.

Oversight notes that OA assumes costs to the state could be substantially higher than those shown in above tables, due to the proposed increases in penalty payments under the proposal.

Oversight notes the state self-assumes its own liability under the LEF, 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.

Oversight notes most LEF costs are reimbursed from the General Revenue Fund (GR). GR has paid for the majority of payments from the LEF since payments on LEF cases for agencies with designated reimbursable funds have been relatively small. According to Office of Administration - Risk Management (OARM), broader budget authority to transfer from Federal and Other Funds beginning in FY 18 allowed for an increase of percentage of payments from Federal and Other Funds.

Oversight does not have any information to the contrary in regards to OA assumption; therefore, Oversight will range the fiscal impact from \$0 (does not increase litigation) to an Unknown cost (increased claims related to safety practices) on the fiscal note.

Officials from the **Missouri State University** assume the proposal has a negative fiscal impact of an undetermined amount.

Officials from the **Missouri University System** assume the proposed statute would create a new potential source of liability for the University; however, it is not possible to identify a significant fiscal impact at this time.

Officials from the **University of Central Missouri** assume the proposal would have an indeterminate fiscal impact. It could be great expenditures associated with the potential violation of the proposal, but no way to estimate.

Oversight notes that according to the [Missouri Department of Labor and Industrial Relations data](#) shows there were 1 fatality and 231 lost time injury incidents in specialized establishments, such as schools, colleges, universities and training centers. Therefore, Oversight will reflect zero (no incidents and violation of the proposed rules) to Unknown costs to the colleges and universities in Missouri.

Oversight notes that [U.S. Bureau of Labor Statistics report on injuries, illnesses, and fatalities](#) show there were 8 fatalities in local governments and 111 fatalities in various private industries throughout the Missouri in 2022.

Oversight notes that **City of Kansas City** assume the proposal would have a negative fiscal impact on the City in an indeterminate amount. Therefore, **Oversight** will note \$0(no violation of policies under the proposal for the local governments) to Unknown costs to the local governments (for potential violation of the policies).

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
GENERAL REVENUE			
<u>Costs - Potential increase in payments to Legal Expense Fund for increase in claims p. 4,5</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO GENERAL REVENUE FUND	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
FEDERAL FUNDS			
<u>Costs - Potential increase in claims p. 4</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO FEDERAL FUNDS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
STATE ROAD FUND (0320)			
<u>Costs - Potential increase in claims for MODOT p. 3,4</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO STATE ROAD FUND	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
COLLEGES AND UNIVERSITIES			
<u>Costs</u> - Potential increase in claims p. 6	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT TO COLLEGES AND UNIVERSITIES	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
OTHER STATE FUNDS			
<u>Costs</u> - OA Potential increase in payments to Legal Expense Fund for increase in claims p. 5	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT TO OTHER STATE FUNDS	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
LEGAL EXPENSE FUND (0692)			
<u>Transfer In</u> - from GR, Federal, and Other State Funds Potential increase in claims for various state agencies (p. 4,5)	\$0 to <u>Unknown</u>	\$0 to <u>Unknown</u>	\$0 to <u>Unknown</u>
<u>Transfer Out</u> - payment for safety violation claims MODOT, DOLIR, & OA for various agencies p. 4,5	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT TO THE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
LOCAL POLITICAL SUBDIVISIONS			
<u>Costs</u> - Potential increase in claims for various local organizations p.6	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL IMPACT – Small Business

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

FISCAL DESCRIPTION

The bill provides that when an injury or death of an employee is caused by the failure of the employer to comply with any safety standard issued by the employer or the Occupational Safety and Health Administration (OSHA), regulation, or statute in this state or any lawful order of the Division of Workers' Compensation within the Department of Labor and Industrial Relations or the Labor and Industrial Relations Commission (LIRC), the compensation and death benefit provided to such employee shall be increased at least 25% but not more than 50%.

This bill provides that the exclusive remedy provision of the Workers' Compensation law shall not apply to any cause of action that may be brought on behalf of an unborn child or their representative in the case of an injury or death which caused the death of an unborn child.

The bill increases from \$5,000 to \$15,000 the maximum compensation owed to persons furnishing burial expenses for deceased employees under Workers' Compensation laws (Sections 287.120, 287.240, RSMo).

This bill increases the amount of liability insurance for tort claims that may be purchased by the Commissioner of the Office of Administration or the governing body of any political subdivision as follows:

- (1) From \$2 million to \$4 million arising out of a single occurrence; and
- (2) From \$300,000 to \$500,000 for any one person in a single accident or occurrence.

The bill increases the liability of all public entities on claims that fall under the sovereign immunity exceptions as follows:

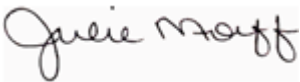
- (1) From \$2 million to \$4 million arising out of a single occurrence; and
- (2) From \$300,000 to \$500,000 for any one person in a single accident or occurrence.

Current law prohibits punitive damages against a public entity. This bill allows punitive damages to be awarded if a plaintiff shows by clear and convincing evidence that the public entity violated a safety standard issued by the employer or the Occupational Safety and Health Administration (OSHA), regulation, or statute in this state, or any lawful order of a court or other judicial body (Section 537.610).

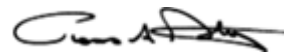
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Administration
Department of Labor and Industrial Relations
Department of Natural Resources
Missouri Department of Transportation
Missouri Department of Conservation
Department of Commerce and Insurance
City of Kansas City
Missouri State University
Missouri University System
University of Central Missouri



Julie Morff
Director
March 5, 2024



Ross Strobe
Assistant Director
March 5, 2024