

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0410-04  
Bill No.: SB 280  
Subject: Civil Procedure; Courts; Health Care; Health Care Professionals; Insurance –  
General; Evidence; Physicians; Motor Vehicles  
Type: Original  
Date: February 10, 2003

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**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
None			
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
Highway	Unknown	Unknown	Unknown
<b>Total Estimated Net Effect on Other State Funds</b>	<b>Unknown</b>	<b>Unknown</b>	<b>Unknown</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 9 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
None			
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

### **FISCAL ANALYSIS**

#### **ASSUMPTION**

Officials from the **Department of Economic Development – Division of Professional Registration** and the **Department of Public Safety – Missouri State Highway Patrol** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Department of Transportation (MoDOT)** assume the elimination of joint and several liability, modifications of the collateral source rule, allowing evidence as to a party's failure to wear a seat belt and limiting the amount of non-economic damages that may be awarded could be advantageous to Missouri Highways and Transportation Commission (MHTC)/MoDOT. However, an accurate estimate would be impossible to determine as the benefit of these revisions would depend upon the number of cases impacted, the potential liability of MHTC in such cases, and other related factors.

ASSUMPTION (continued)

Officials from the **Department of Health and Senior Services (DHSS)** assume the legislation would not be expected to significantly impact the operations of the DHSS. If the proposal were to substantially impact any DHSS programs, they would request funding through the legislative process.

Officials from the **Department of Insurance** assume fiscal impact to their department will be minimal. Legislation will have wide-ranging effects upon the professional liability insurance industry in Missouri. It is hard to predict the result of the implementation of this bill and it is unknown if tort reform will considerably reduce medical malpractice premiums. It is also unknown what impact the non-medical tort reforms may have on those lines of insurance.

Officials from the **Department of Labor and Industrial Relations (DOL)** assume the proposed legislation would have no fiscal impact on their agency. The DOL's no impact is based on the following assumptions:

Proposed Section 490.715, RSMo, permits the defendant to introduce evidence supporting payments made to the plaintiff by the workers' compensation insurance carrier or the plaintiff's employer or the employer's authorized representative. Presently, Section 287.150, RSMo, governs the apportionment between the employer/insurer and the employee or his dependents where the employee recovers a monetary sum from the third party tortfeasor in a civil suit pursuant to a judgment or settlement. Generally, the employee has a pending workers' compensation case and the Missouri Supreme Court in *Ruediger v. Kallmeyer Bros. Service*, 501 S.W. 2d 56 (Mo. 1973) set forth a formula for apportioning recovery from a third party pursuant to Section 287.150(3), RSMo. See also *Tillman v. Cam's Trucking, Inc.*, 20 S.W. 3d 579, 584 (Mo. App. W.D. 2000) where the court applying Section 375.772.2 (2), RSMo, established different rules when "(1) an injured worker receives workers' compensation benefits from his employer's workers' compensation insurer, (2) the worker sues a third party for the same injury, (3) the third party's liability insurer becomes insolvent and is ordered liquidated, and (4) [Missouri Property and Casualty Insurance Guaranty Association] is thence deemed the insurer of the third party." The Division assumes that the proposed legislation does not intend to change the subrogation interests afforded to the employer/insurer or the Second Injury Fund under Section 287.150, RSMo.

Proposed Section 537.071, RSMo, caps the non-economic damage amounts at \$250,000 in all tort actions but explicitly excludes punitive damages. Since the Tort Victim's Compensation Fund (TVC Fund) administered by the DOL is funded strictly by punitive damages, this exclusion retains the existing potential funding base and is, therefore, of no consequence to the

TVC Fund.

ASSUMPTION (continued)

Proposed Section 539.234, RSMo, requires “clear and convincing evidence” prior to the award of punitive damages against the health care providers. In addition, this section caps punitive damages against health care providers at two (2) times the actual damages. Combined, these two provisions may limit the amount of punitive damage awards in Missouri and, consequently, have an impact on receipts into the TVC Fund. However, since this provision only applies to health care providers, and coupled with the fact that punitive damages are seldom awarded in Missouri, the potential impact of these provisions may be minimal.

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
<b>HIGHWAY FUND</b>			
<u>Savings – Department of Transportation</u>			
Limits on damage awards	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>ESTIMATED NET EFFECT ON HIGHWAY FUND</b>	<u><b>Unknown</b></u>	<u><b>Unknown</b></u>	<u><b>Unknown</b></u>
<u>FISCAL IMPACT - Local Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
	\$0	\$0	\$0

FISCAL IMPACT - Small Business

The proposed legislation could have a fiscal impact on small businesses.

DESCRIPTION

The proposed legislation would enact several tort reform measures:

SEAT BELT VIOLATIONS – Under this proposal, the failure to wear a seat belt would be

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considered as evidence of comparative negligence in a lawsuit. The failure to wear a seatbelt could also be admitted to mitigate damages without introducing expert evidence proving that the failure to wear the belt contributed to the injuries. (§307.178)

DESCRIPTION (continued)

**COLLATERAL SOURCE RULE** – The proposal would modify the collateral source rule by adding the plaintiff's employer, workers' compensation insurer, and other insurance companies to the list of persons or entities in which the defendant can introduce evidence of payment. If the defendant would introduce collateral source evidence, the defendant would not waive his or her right to a credit for any payments the defendant may have made to the plaintiff. Under current law, any introduction of collateral source evidence constitutes a waiver of any right to a credit against a judgment. (§490.715)

**VENUE SHOPPING** – The proposal would require courts to dismiss or transfer venue of any cause of action which has accrued outside of the county in which the court is located if there is another forum with jurisdiction of the parties and in which venue is proper and which the trial can be conveniently held taking into account the following factors: 1. The location where the cause of action accrued; 2. The location of witnesses other than retained experts, wherever located, and health care providers whose principal office is more than 100 miles from the residence of the plaintiff; 3. The residence of the parties. A party could file a motion to transfer venue to a more convenient forum within 90 days after the last day allowed for the filing of a party's answer. A party who files an action in a county other than a county where one or more defendants reside or where the cause of action accrued would bear the burden that the forum where the cause of action is pending is more convenient than a forum in which one or more defendants reside or where the cause of actions accrued. If the court would find a more convenient forum, the court would grant the motion and transfer the case to the more convenient forum or dismiss the action so it can be filed in another state. If the action would be dismissed, and the cause of action is filed in another state with proper jurisdiction within six months of the order of dismissal, the defendants would accept service of process in the other state. If the plaintiff would file the action in another state within six months of the dismissal order, and the statute of limitations has run when the action is filed in the other state, the defendants would waive the statute of limitations as a defense for that time period. If a defendant would fail to abide by these conditions, the plaintiff's cause of actions would be reinstated in the court which dismissed the action. Alternatively, if the court in the other forum would refuse to accept jurisdiction, the plaintiff could, within 30 days of the final order refusing jurisdiction, reinstate the action in the court which dismissed the cause of action. This section would require the court clerk transferring a case to a more convenient forum to certify and transfer all original papers and orders to the new forum. (§§508.075, 509.290)

**PUNITIVE DAMAGES** – The proposal would limit punitive damages in all actions tried before a jury to three times the liability of the defendant for compensatory damages. (§510.263)

**DESCRIPTION** (continued)

**SUPERSEDAS BONDS** – The proposal would establish a \$25 million limit on supersedas bonds. This limit would not apply if the appellee proved that the appellant is purposely dissipating assets outside the ordinary course of business to avoid payment of the judgment. If that is proven, the court could require a bond equal to the full amount of the judgment. (§512.099)

**STATUTE OF LIMITATIONS** – The proposal would modify the law regarding when a minor can bring a cause of action for medical malpractice. Under current law, a person less than 18 years of age has until the age of 20 to bring a cause of action. This proposal states that a minor less than six years of age has until his or her eighth birthday to bring the cause of action. (§516.105)

**JOINT AND SEVERAL LIABILITY** – The proposal would repeal the current doctrine of joint and several liability and limits liability to the percentage of fault attributed to each defendant by the trier of fact. (§537.067)

**NONECONOMIC DAMAGES** – The proposal would limit noneconomic damages in tort actions to \$250,000. (§538.071)

**MEDICAL MALPRACTICE NONECONOMIC DAMAGES CAP** – The proposal would lower the cap on noneconomic damages from \$350,000 to \$250,000 and remove the provision of the law which subjects the cap to periodic inflation increases. The proposal would also remove the words “per occurrence” to ensure that there is a single cap, and not multiple caps per incidents of medical malpractice as held by the court in Scott v. SSM Healthcare. (§538.210)

**DAMAGE CAPS FOR TRAUMA CARE** – The proposal would impose a \$50,000 damage cap on claims arising out of the provision of trauma or emergency room care. (§538.212)

**CAP ON CONTINGENCY FEES** – The proposal would limit attorney’s contingency fees in medical malpractice actions to 33% of the first \$50,000 recovered; 25% of the next \$50,000, 15% of the next \$500,000; and 10% of any amount exceeding \$600,000. In no case would an attorney collect fees, charges, or any other costs which in the aggregate total more than 33% of

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the total charges. (§538.224)

DESCRIPTION (continued)

**AFFIDAVIT OF MERIT** – The proposal would require (current law is discretionary) a court to dismiss any medical malpractice claim for which the plaintiff fails to file an affidavit stating that he or she has obtained the written opinion of a health care provider which states that the defendant failed to use such care as a reasonably prudent and careful health care provider would have under similar circumstances and that such failure caused the plaintiff's damages. The provision would also require the expert to be licensed and actively practicing in the same specialty as the defendant. (§538.225)

**BENEVOLENT GESTURES** – The proposal would make statement, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident inadmissible as evidence in a civil action. Statements of fault, however, would not be inadmissible. (§538.227)

**LOSER PAYS** – The proposal would require the losing party in a medical malpractice action to pay the prevailing party's reasonable attorney fees and court costs. (§538.232)

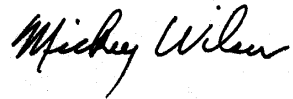
**MEDICAL MALPRACTICE PUNITIVE DAMAGES** – The proposal would limit punitive damages in medical malpractice actions to cases where the defendant's actions were due to evil motive or reckless indifference. Punitive damages would be capped at two times the total actual damages. (§538.234)

**MANDATORY INSURANCE COVERAGE** – The proposal would provide that health carriers and hospitals could not require physicians to carry professional liability insurance as a condition of contracting or granting hospital staff privileges. This proposal would also remove the provision of the law which requires hospitals located within counties having more than 75,000 inhabitants to carry medical malpractice insurance in the minimum amount of \$500,000. (§538.236)

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 State Courts Administrator  
Department of Economic Development  
Department of Transportation  
Department of Health and Senior Services  
Department of Labor and Industrial Relations  
Department of Public Safety  
    – Missouri State Highway Patrol  
Department of Insurance

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA  
Director  
February 10, 2003