

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0410-08
Bill No.: SCS for SB 280
Subject: Civil Procedure; Courts; Health Care; Health Care Professionals; Insurance –
General; Evidence; Physicians; Motor Vehicles
Type: Original
Date: March 10, 2003

FISCAL SUMMARY

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

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

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

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

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

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Economic Development, Department of Public Safety – Missouri State Highway Patrol**, and the – **Missouri State Water 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 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 negligible. Legislation will have wide-ranging and profound effects upon the entire professional liability insurance industry in Missouri.

ASSUMPTION (continued)

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:

Under the Missouri Workers' Compensation law, an injured employee may file a workers' compensation claim if the injury occurred in the course and scope of his employment, and also file a personal injury or wrongful death lawsuit in circuit court against a third party. The employee receives medical treatment to cure and relieve him/her from the effects of the work-related injury by a health care provider that is selected or approved by the employer or its workers' compensation insurance carrier. The health care provider is paid the reasonable fees and charges for the medical treatment provided to the injured employee in the underlying workers' compensation case, pursuant to Section 287.140, RSMo. If there is a dispute on the reasonableness of the fees or charges or whether the employer or its workers' compensation insurance carrier authorized the medical treatment and is responsible to pay the charges, the health care provider files a Medical Fee Dispute with the Division of Workers' Compensation, pursuant to Section 287.140 (3) & (4), RSMo or Section 287.140.13 (5) & (6) and 8 CSR 50-2.030. The DOL assumes that proposed section 430.225 does not permit the health care provider to assert a lien on a claim filed by the patient under Section 430.225.3, as well. Because the health care providers have a remedy to pursue disputes under Chapter 287, RSMo, the DOL interprets the proposed language in Section 430.225 as having no effect on tort claims where there is also liability under the workers' compensation law.

The rights of employers and their workers' compensation insurance carriers to subrogation for recovery of any amounts paid through the workers' compensation system are protected under §287.150, RSMo. The proposed section is interpreted to have no effect on this right of subrogation and the allocation of the moneys subrogated under the Ruediger formula. See *Ruediger v. Kallmeyer Brothers Service*, 501 S.W. 2d 56 (Mo.banc 1973), and *Kerperien v. Lumberman's Mutual Casualty*, 2002 WL 1335591 (Mo.App. E.D. June 18, 2002).

Officials from the **Department of Transportation (MoDOT)** assume the change to Section 105.711 would limit the payments from the State Legal Expense Fund to any one claimant to \$500,000 total. By limiting the payments to \$500,000 total, this would limit the amount recoverable against MoDOT employees, which is a positive benefit. However, the language is not clear regarding claims against the state entity, in this case Missouri Highways and Transportation Commission (MHTC) and MoDOT. MoDOT and MHTC maintain a self-insurance fund for paying tort liability claims against MoDOT and MHTC. The provisions in Section 105.711 apply only to payments from the SLEF. Therefore, potentially a claimant

could recover up to \$500,000 against a MoDOT employee and up to the statutory limit in

ASSUMPTION (continued)

Section 537.610 against MHTC (approximately \$321,000+), resulting in total potential recovery of \$821,000. This change would probably result in some unknown, positive fiscal impact.

The joint and several liability provisions in Section 537.067 allows a defendant to be jointly and severally liable for the amount compensatory and non-economic damages if such defendant is found to be 10% or more at fault, however, the defendant is not to be held jointly and severally liable for more than the percentage of punitive damages for which fault is attributed to such defendant by the jury. Therefore, if a defendant is 11% at fault, and the remaining co-defendant is 89% at fault and cannot pay, the defendant must pay that co-defendant's percentage of damages. While this may limit some tort awards against MHTC, resulting in some positive fiscal impact, the total positive fiscal impact is unknown.

Section 307.178, RSMo is amended to delete existing law which limits the reduction to a plaintiff's damages in a tort case by 1% if the plaintiff was not wearing a seat belt. The new language provides that failure to wear a seat belt shall be considered as evidence of comparative negligence to be used to increase the fault of the plaintiff without an arbitrary maximum limit. This will possibly have some positive fiscal impact to MHTC, but it is unknown.

There are additional provisions relating to venue that would potentially have some small benefits to MHTC as well.

In summary, MoDOT assumes the proposal would result in an unknown savings to the Highway Fund in each fiscal year.

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

FISCAL IMPACT - Local Government

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:

LEGAL EXPENSE FUND – Add attorneys practicing pro bono at tax-exempt nonprofit community social services centers to coverage from the Fund up to \$500,000. (Section 105.711)

IMMUNITY ON LAND NEAR PUBLIC TRAILS – Provide that the immunity from liability for injuries on private land adjoining a public trail would not extend when the injuries were caused by the failure of the owner of the land to warn of an artificial condition that is likely to cause death or serious injury. (Section 258.100)

SEAT BELT VIOLATIONS – Failure to wear a seat belt would be 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. (Section 307.178)

LIENS FOR HEALTH PRACTITIONERS – Allow liens for health practitioners who provide medical services to patients injured by tortfeasors. The original enactment of this section was ruled unconstitutional by the Supreme Court. (Section 430.225)

VENUE SHOPPING – The venue in all tort actions, including torts for improper healthcare, would only be in county where cause of action accrued. If the cause did not accrue in Missouri, then the venue would be determined as if it was not a tort action. In suits against corporations, the venue would only be in the county where the cause of action accrued. (Sections 508.010 and 508.040)

DESCRIPTION (continued)

PUNITIVE DAMAGES – In tort actions, including for improper healthcare, the proposal would allow discovery of the defendant’s assets only after a judge determines that plaintiff has a submissible case on punitive damages. The proposal would include a definition of “damages.” (Section 510.263)

CLASS ACTION CERTIFICATION – Orders granting or denying class certification would be appealable. The court of appeals must accept the appeal, but the circuit court or court of appeals would have discretion on whether to stay proceedings pending appeal. (Section 512.020)

SUPERSEDEAS BONDS – The proposal would establish a \$50 million limit on supersedeas bonds if the appellant proves that it has unencumbered assets that equal or exceed the amount of the judgement in excess of \$50 million. If the appellant fails to maintain such level of assets or is purposely dissipating assets outside the ordinary course of business to avoid payment of the judgment, then the court could require a bond equal to the full amount of the judgment. (Section 512.099)

JOINT AND SEVERAL LIABILITY – Provide for joint and several liability for compensatory and noneconomic damages if a defendant is found to bear 10% or more of the fault, but would only make a defendant liable for their portion of fault for punitive damages. (Section 537.067)

MEDIATION – This provision would require mediation for all tort actions unless the court finds that mediation has no chance of success. (Section 537.072)

PADDLESPOUT LIABILITY – Limit liability of paddlesport outfitters for injury or death cause by inherent risks of paddlesport activities. (Section 537.327)

AFFIDAVITS IN TORT ACTIONS AGAINST LICENSED PROFESSIONALS – This provision would require an affidavit from a similarly licensed professional supporting a cause of action for non-medical claims of professional negligence. (Section 537.530)

MEDICAL MALPRACTICE NONECONOMIC DAMAGES CAP – This provision would remove the words “per occurrence” to ensure that there is a single cap, and not multiple caps per incidents of medical malpractice. The provision would also provide for a cap on noneconomic damages of \$350,000 and that periodic inflationary increases from the cap would begin on August 28, 2003. (Section 538.210)

DESCRIPTION (continued)

AFFIDAVIT OF MERIT – This provision 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 proposal would limit extensions of time to file such affidavit to 90 days. The provision would also require the expert to be licensed and actively practicing in substantially the same specialty as the defendant. (Section 538.225)

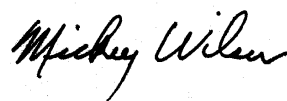
BENEVOLENT GESTURES – This provision would make statement, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident inadmissible as evidence in a civil action. Statements of fault, however, would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

MISCELLANEOUS CASES - This provision would allow for the filing of a miscellaneous case against anonymous persons in order to secure copies of health care records. Such filing would toll the statute of limitations for 120 days. (Section 1)

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
Department of Insurance



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