

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3029-06
Bill No.: SB 1094
Subject: Civil Procedure; Courts; Health Care; Health Care Professionals; Evidence;
Physicians; Liability; Attorneys
Type: Original
Date: January 26, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
General Revenue	Unknown	Unknown	Unknown
Total Estimated Net Effect on General Revenue Fund	Unknown	Unknown	Unknown

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Highway	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>All</u> State Funds	Unknown	Unknown	Unknown

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration – Administrative Hearing Commission, Department of Mental Health, Department of Labor and Industrial Relations, Department of Health and Senior Services, Missouri Consolidated Health Care Plan, Department of Insurance,** and the **Department of Conservation** 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 **Office of Administration – Division of General Services/Risk Management** assume the proposed legislation has the potential for savings from the prejudgment interest provisions as well as the provisions addressing venue for tort actions and the provisions enacting limits of liability regarding joint and several liability. The amount of savings cannot be determined at this time.

ASSUMPTION (continued)

Officials from the **Department of Transportation (MoDOT)** assume the changes to §537.067, which provide a defendant is not to be held jointly and severally liable for more than the percentage fault attributed to such defendant, could be advantageous to the Missouri Highways and Transportation Commission (MHTC)/MoDOT. However, MoDOT is not able to determine an accurate estimate as the benefit of this revision would depend upon the number of cases impacted, the potential liability of MHTC in such cases, and other related factors.

There are additional provisions relating to venue, as well as a new §537.072, which requires the court to establish a discovery period after which the action would be referred to mediation (unless the court provides written findings that mediation would have no chance of success). These provisions could also result in some positive fiscal impact to MoDOT and the MHTC, but the amount is unknown.

Officials from the **Office of Attorney General** did not respond to Oversight's request for fiscal impact. However, in response to similar legislation from a previous session, officials assumed the costs of the proposed legislation could be absorbed within existing resources.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
GENERAL REVENUE FUND			
<u>Savings</u> – Office of Administration Liability limits/venue changes	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
HIGHWAY FUNDS			
<u>Savings</u> – Department of Transportation Liability limits/venue changes	Unknown	Unknown	Unknown
ESTIMATED NET EFFECT ON HIGHWAY FUNDS	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

FISCAL IMPACT - Local Government

FY 2005
(10 Mo.)

FY 2006

FY 2007

\$0

\$0

\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

The proposed legislation would modify provisions relating to tort reform:

1. INTEREST ON JUDGEMENTS (§408.040) – Prejudgement interest would be calculated 90 days after the demand or offer is received by certified mail return receipt. Currently, it is calculated 60 days after the demand or offer is made. Such demands and offers would be in writing, accompanied by an affidavit from the claimant covering the legal theory and damages claimed, list the medical providers of the claimant, include other medical information, contain authorization to allow the other party to obtain employment and medical records, and be left open for 90 days. The trial court would determine whether prejudgement interest is awarded. Claims for prejudgement and post-judgment interest in tort actions would be calculated at a interest rate tied to the auction price for 52 week U.S. Treasury bills.
2. EXPERT WITNESS TESTIMONY (§490.065) – The proposal would adopt language contained in Federal Rules of Evidence that allows expert testimony if the testimony is based upon sufficient facts or data, is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case.
3. VENUE (§508.010) – Would require that venue in all tort actions, including torts for improper healthcare, be only be in county where cause of action accrued. If the cause did not accrue in Missouri, then venue would be in the county where the defendant resides. The residence of a corporation would be where the registered agent of the corporation maintains an office. Venue in suits against not-for-profit corporations would be in the county where the cause of action accrues or the county where the office of the registered agent is maintained. The proposal would also repeal sections 508.040 (venue for corporations) and 508.070 (venue for motor carriers).

DESCRIPTION (continued)

4. PUNITIVE DAMAGES (§510.263) – A jury would be required to find that a defendant’s actions or omissions were willful, wanton or malicious by clear and convincing evidence in order to have a submissible case for punitive damages. “Punitive damage award” would be defined to include an award for punitive or exemplary damages as well as an award for aggravating circumstances. Discovery of a defendant’s assets only could occur after the trial court would find the plaintiff has a submissible case for punitive damages.
5. STATUTE OF LIMITATIONS IN ACTIONS AGAINST HEALTH CARE PROVIDERS (§516.105) – A minor less than six years of age would have until his 8th birthday to bring cause of action. Currently, a person less than 18 years of age has until the age of 20 to bring the action.
6. JOINT AND SEVERAL LIABILITY (§537.067) – Repeal the current doctrine of joint and several liability and limits liability in all tort actions, including tort actions based on improper health care, to the percentage of fault attributed to each defendant by the trier of fact. The proposal would repeal Section 538.230, which created a separate comparative fault statute for tort actions involving improper health care.
7. MEDIATION (Section 537.072) – Require mediation in all tort cases except where judge finds no chance of success.
8. DEFINITION OF “HEALTH CARE PROVIDER” (§538.205) - Include long term care facilities licensed under Chapter 198, RSMo, professional corporations, business corporations and any other person or entity that provides health care services through one or more employees possessing a license or certificate.
9. MEDICAL MALPRACTICE NONECONOMIC DAMAGES CAP (§538.210) – Cap on noneconomic damages for all plaintiffs is lowered from \$350,000 to \$250,000 per cause of action and provision that subject cap to periodic inflation increases would be removed. This section would also remove the words “per occurrence” to ensure a single cap and not multiple caps per incidents of medical malpractice as held by the court in Scott v. SSM Healthcare. No hospital or health care provider would be liable for actions of entity or person who is not an employee of such hospital or health care provider. All persons and entities asserting a wrongful death claim would be considered one plaintiff.

DESCRIPTION (continued)

10. **DAMAGE CAPS FOR TRAUMA CARE (§538.213)** – Limit civil damages against certain physicians, dentists, hospitals and hospital employees to \$150,000 in claims arising out of emergency room care. The limit would not apply to grossly negligent or reckless, willful or wanton conduct.
11. **AFFIDAVIT OF MERIT (§538.225)** – Require a court to dismiss any medical malpractice claim where the plaintiff fails to file an affidavit stating that he or she has obtained the written opinion of a legally qualified health care provider which states that the defendant failed to use reasonable care and such care caused plaintiff's damages. Currently, it is within the court's discretion to dismiss the case. The affidavit would be required to state the names and addresses of all health care providers offering the opinion. The expert would be required to be licensed in the same profession and substantially the same specialty as the defendant. The time for filing the affidavit could be extended for up to 90 days.
12. **BENEVOLENT GESTURES (§538.227)** – Prohibit statements, writings, or benevolent gestures expressing sympathy made to the person or to the family of the person from being admitted into evidence.
13. **PEER REVIEW RECORDS (§538.301)** – Records of certain quality assessment and assurance committees would be confidential and not subject to legal compulsion nor use in any proceeding. Persons would not be liable for good faith decisions regarding such committees. Persons could not be compelled to testify regarding such documents.
14. **SEVERABILITY (Section 1)** – The proposal contains a severability clause.
15. **EFFECTIVE DATE OF ACT (Section 2)** – The act would only apply to cases filed after August 28, 2004.

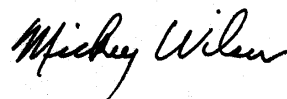
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Administration
 – Administrative Hearing Commission
 – Division of General Services/Risk Management
Office of State Courts Administrator
Department of Transportation
Department of Mental Health
Department of Health and Senior Services
Department of Labor and Industrial Relations
Missouri Consolidated Health Care Plan
Department of Insurance
Department of Conservation

NOT RESPONDING

Office of Attorney General



Mickey Wilson, CPA
Director
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