

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0250-06
Bill No.: HCS for SS for SCS for SB 66
Subject: Workers' Compensation
Type: Original
Date: April 18, 2017

Bill Summary: This proposal modifies provisions of law relating to workers' compensation.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue	(\$163,134)	(\$33,442)	(\$34,278)
Total Estimated Net Effect on General Revenue	(\$163,134)	(\$33,442)	(\$34,278)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Workers' Compensation Fund	Up to (\$64,333)	Up to (\$128,665)	Up to (\$128,665)
Second Injury Fund	Up to (\$385,994)	Up to (\$771,987)	Up to (\$771,987)
Legal Expense Fund	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
Total Estimated Net Effect on Other State Funds	Up to (\$450,327)	Up to (\$900,652)	Up to (\$900,652)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on FTE	0	0	0

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 to Unknown	\$0 to Unknown	\$0 to Unknown

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Labor and Industrial Relations** did not respond to Oversight's request for a fiscal impact from this version of the proposal.

In response to a previous version of this proposal (0250-03), officials at the **Department of Labor and Industrial Relations - Division of Workers' Compensation (DOLIR - DWC)** assumed the proposal would have an impact on their organization.

The Division of Workers' Compensation could see an increase in the number of cases that are heard before an Administrative Law Judge (ALJ). Claims for compensation, including the claims that are currently pending before the division, that would otherwise have been settled would probably now be tried by an ALJ.

In CY2016, through 12/8/2016, the division received 19,914 requests for docket setting which includes requests for conference, pre hearing, mediation, dismissals, and evidentiary hearings. This number does not include cases that have been continued and reset for a future docket setting based upon a written request of the parties or at a prior docket setting. There were 2,467 requests for hearing which includes requests for hearing on final award; §287.203 or hardship hearing requests; and Second Injury Fund (SIF) claims. In addition, the division set 3,801 cases on a show cause docket through 12/8/2016. In CY 2016, through 12/8/2016, the division's ALJs heard 1,518 claims and 576 total awards for claims were issued. The ALJs also issue Awards on Undisputed Facts in Medical Fee – Reasonableness Cases. Furthermore, 12,974 claim resolutions were approved by an ALJ based upon settlement agreements, eliminating the need of the parties to proceed to an evidentiary hearing.

There are approximately 47,000 claims currently pending before the division. Some of the claims relate to occupational diseases due to toxic exposure which involves complex issues that an ALJ would need additional time to review and determine. While the bill defines maximum medical improvement (MMI), the issue of when a claimant is placed at MMI would most likely be litigated before an ALJ which would result in an increase in the requests for hearings. In addition, the bill states that the "finding of extenuating circumstances" in the case of compromise settlements offered pursuant to §287.390 would be made by an ALJ or the Labor and Industrial Relations Commission. Furthermore, this bill would impact the parties' ability to compromise disputes and enter into settlement agreements due to the uncertainty surrounding the issue of when a claimant reaches MMI.

OA-DWC notes this proposal would require additional fields be added to the AICS resulting in changes to the database. These changes require a significant increase in analysis. Additional imaging resources will be needed and no additional equipment or licensing will be required.

ASSUMPTION (continued)

OA-DWC assumes the additional fields will be added to the AICS at a cost of \$163,134 for FY18, \$33,442 for FY19, and \$34,728 for FY20. The costs for FY18 will be the result of costs incurred by ITSD consultants to make changes to the AICS database and the necessary costs for on-going ITSD support for FY19 and FY20.

DOLIR received additional appropriations for FY2017 and increased the number of Administrative Law Judges to their staff; these appropriations were unrelated to a similar proposal in 2016 (SB 1027). Therefore, DOLIR noted the anticipated additional work created from this proposal can be absorbed with their current resources. However, the costs for ITSD for programming and other system changes are still necessary.

Oversight will show a negative fiscal impact to DOLIR for the ITSD costs.

In response to a similar proposal from this session (HB 289), officials at the **Department of Labor and Industrial Relations (DOLIR)** assumed the proposal would have a negative fiscal impact on their organization.

The Division of Workers' Compensation projects a loss of revenue for both the Workers' Compensation Administrative Fund and the Second Injury Fund. According to the Department of Revenue, in December 2016 there were 137,786 S corporations located in the state of Missouri which would fall under consideration as an S corporation within the tax law. Of the 137,786 S corporations located in Missouri, 34,442 are Limited Liability Companies which are treated as an S corporation under the tax law.

For the purposes of this estimate, DOLIR has used the following information:

- The premium determination for executive officers is calculated using the payroll amount of \$40,600, effective Jan. 1, 2017.
- The 2016 rate for officers and clerical class is 23 cents per \$100 of workers' compensation payroll. The estimated premium for one officer is \$93.38.
- If all of the S-Corporations/LLCs have at least one shareholder who has a 40% or greater interest in the corporation, and that shareholder individually elects to reject coverage, and assuming an average experience modification factor of 1.00, there would be a reduction in total premium of at least \$12,866,457 for an entire fiscal year (137,786 x \$93.38).
- The Workers' Compensation Administrative tax and surcharge rate for CY2017 is 1%. The Second Injury Fund surcharge rate and supplemental surcharge rate is a total of 6%.

ASSUMPTION (continued)

The Department of Labor and Industrial Relations estimates a decrease to the Workers' Compensation Administrative Fund of \$64,333 and to the Second Injury Fund of \$385,994 in FY 2018. In FY 2019, the decreases estimated at \$128,665 for the Administrative Fund and \$771,987 for the Second Injury Fund. The chart below shows the calculations used to arrive at these estimates.

Revenue Loss Calculations		
Number of S-Corporations and LLCs Treated as S-Corps	137,786	
Payroll Amount for Executive Officers/Clerical	\$40,600	
Workers' Compensation Rate per \$100 of Payroll	\$0.23	
Estimated Premium for 1 Shareholder	\$93.38	@ \$100 of payroll
Total Estimated Premiums	\$12,866,457	Using average modification factor of 1.00
Workers' Compensation Administrative Tax Rate	1%	
X Estimated Premium =	\$128,665	Full Year FY 2019
X .50 =	\$64,333	Six Months for FY 2018
Second Injury Surcharge Rate + Supplemental Surcharge	6%	
X Estimated Premium =	\$771,987	Full Year FY 2019
X .50 =	\$385,994	Six Months for FY 2018

If the number of shareholders who opt out of workers' compensation coverage increases or decreases, the impact to the Workers' Compensation Administrative Fund and Second Injury Fund would change accordingly.

Oversight assumes this proposal would authorize a shareholder with at least 40% interest in an S corporation to reject workers' compensation coverage. Oversight also assumes the proposal could become effective January 1, 2018. Since it is unknown how many shareholders fall within this category, for fiscal note purposes, Oversight will use the DOLIR's estimate of loss to the Workers' Compensation Administrative Fund and the Second Injury Fund. Oversight will include a loss of six months (50% of full year loss) for FY 2018 and a full year as maximum possible losses for FY 2019 and FY 2020.

Officials at the **Office of Administration- General Services (OA-GS)** understands, and therefore assumes, that the legal standard in 287.780 creates a slightly higher burden on plaintiffs seeking damages for retaliatory discharge or discrimination. This higher burden may result in either fewer claims for damages being made against state agencies or employees, or in more

ASSUMPTION (continued)

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 might create 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.

Office of Administration—General Services assumes that no any state employee would violate the proposal. Therefore, it is assumed that no successful claims will be made against the Legal Expense Fund and the proposal would thus have no fiscal impact upon the Office of Administration—General Services. However, should that assumption prove to be incorrect, significant costs could be incurred by the Legal Expense Fund.

Oversight will show a potential savings to the Legal Expense Fund of \$0 to Unknown based on the response from OA-GS.

Officials at the **Department of Corrections** defers to Office of Administration - General Services for fiscal impact.

In response to a similar proposal from this session (SB 282), officials at the **Department of Conservation** assumed this proposal would have a negative fiscal impact on their organization estimated at less than \$100,000 annually.

Oversight will not show a fiscal impact to MDC based on information obtained from the Department of Labor and Industrial Relations - Division of Workers' Compensation FY2017 budget submitted to the Governor. The following table provides the number of claims and total dollar amount paid in claims from the Line of Duty Compensation Fund (0939). As the table indicates in FY2013 there were 13 claims for a total of \$325,000 paid out and decreases to 2 claims and \$50,000 paid out in FY2015. Therefore, Oversight will not show a fiscal impact to MDC from this proposal.

ASSUMPTION (continued)

Department of Labor and Industrial Relations - Division of Workers' Compensation					
Line of Duty Compensation - Fund 0939					
	FY2013	FY2014	FY2015	FY2016	FY2017*
# of Claims Paid	13	10	2	5	4
Total Dollar Amount of Claims Paid	\$325,000	\$250,000	\$50,000	\$125,000	\$100,000
* Number of Claims and Total Dollar Amount of Claims Paid to Date					
<i>Information in this table obtained from the FY2017 and FY 2018 Budgets (pages 164 & 165) which were submitted to the Governor by Department of Labor and Industrial Relations.</i>					

Officials at the **Department of Conservation**, the **Department of Insurance, Financial Institutions and Professional Registration**, the **Joint Committee on Administrative Rules**, the **Office of Prosecution Services**, the **State Public Defender's Office**, the **Department of Public Safety - Highway Patrol**, and the **Department of Transportation** each assume this proposal will not have a fiscal impact on their respective organizations.

In response to a previous version of this proposal (0250-03), Officials at the **Office of State Courts Administrator** assume this proposal would not have a fiscal impact on their organization.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

In response to a previous version of this proposal (0250-02), officials at the **Attorney General's Office** assume that any potential costs arising from this proposal can be absorbed with existing resources.

ASSUMPTION (continued)

In response to a previous version of this proposal (0250-03), officials at the **City of Kansas City** assumed the proposal would not have a fiscal impact on their organization.

In response to a previous version of this proposal (0250-03), officials at **Callaway County** assumed the proposal would have a negative fiscal impact on their organization.

Officials at the **St. Louis Department of Justice Services** assume this proposal would not have a fiscal impact on their organization.

Oversight will not show a fiscal impact to local political subdivisions based on responses received.

Officials at **Missouri State University, Northwest Missouri State University, Missouri Western State University, University of Central Missouri,** and the **University of Missouri** each assume this proposal will not have a fiscal impact on their respective organizations.

In response to a previous version of this proposal (0250-03), officials at the **State Technical College of Missouri** assumed the proposal will not have a fiscal impact on their organization.

In response to a previous version of this proposal (0250-01), officials at **Truman State University** assumed the proposal would not have a fiscal impact on their organization.

Officials at the school district of **Kirksville R-III** assume the proposal would not have a fiscal impact on their organization.

In response to a previous version of this proposal (0250-03), officials at the school districts of **Kearney R-I** and **West Plains R-VII** each assumed the proposal would not have a fiscal impact on their respective organizations.

In response to a previous version of this proposal (0250-02), officials at the school district of **Everton R-III** assumed the proposal will not have a fiscal impact on their respective organizations.

In response to a similar proposal from this year (SB 282), officials at the **Department of Labor and Industrial Relations (DOLIR) - Division of Workers' Compensation (DWC)** believed that any additional responsibilities, including an increase in investigation efforts to substantiate claims, could be absorbed by existing staff. However, the effect of any judicial pronouncements could affect long-range estimates. If significant impact that could not be absorbed were realized in out-years, the division would request additional resources through the appropriation process.

ASSUMPTION (continued)

Officials at the following cities: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Columbia, Dardenne Prairie, Des Peres, Excelsior Springs, Florissant, Frontenac, Fulton, Gladstone, Grandview, Harrisonville, Independence, Jefferson City, Joplin, Kearney, Knob Noster, Ladue, Lake Ozark, Lee Summit, Liberty, Louisiana, Maryland Heights, Maryville, Mexico, Monett, Neosho, O'Fallon, Pacific, Peculiar, Pineville, Popular Bluff, Raytown, Republic, Richmond, Rolla, Sedalia, Springfield, St. Charles, St. Joseph, St. Louis, St. Robert, Sugar Creek, Sullivan, Warrensburg, Warrenton, Webb City, Weldon Spring and West Plains did not respond to **Oversight's** request for fiscal impact.

Officials at the following counties: Andrew, Atchison, Audrain, Barry, Bollinger, Boone, Buchanan, Camden, Cape Girardeau, Carroll, Cass, Christian, Clay, Cole, Cooper, DeKalb, Dent, Franklin, Greene, Holt, Jackson, Jefferson, Johnson, Knox, Laclede, Lawrence, Lincoln, Maries, Marion, McDonald, Miller, Mississippi, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Perry, Pettis, Phelps, Platte, Pulaski, Scott, Shelby, St. Charles, St. Louis, St. Francois, Taney, Warren, Wayne and Worth did not respond to **Oversight's** request for fiscal impact.

Officials at the following colleges: Crowder, East Central Community College, Harris-Stowe, Jefferson College, Lincoln University, Metropolitan Community College, Moberly Area Community College, Missouri Southern State University, Southeast Missouri State University, State Fair Community College, St. Charles Community College, St. Louis Community College, and the Three Rivers Community College did not respond to **Oversight's** request for fiscal impact.

Officials at the following school districts: Arcadia Valley R-2, Aurora R-8, Avilla R-13, Bakersfield, Belton, Benton County R-2, Bismark R-5, Bloomfield R-14, Blue Springs, Bolivar R-I, Bowling Green R-1, Branson, Brentwood, Bronaugh R-7, Campbell R-2, Carrollton R-7, Caruthersville, Cassville R-4, Central R-III, Chilhowee R-4, Chillicothe R-II, Clarkton C-4, Cole R-I, Columbia, Concordia R-2, Crawford County R-1, Crocker R-II, Delta C-7, East Carter R-2, East Newton R-6, Eldon R-I, Fair Grove, Fair Play, Fayette R-3, Forsyth R-3, Fox C-6, Fredericktown R-I, Fulton, Grain Valley, Hancock Place, Hannibal, Harrisonburg R-8, Harrisonville, Hillsboro R-3, Hollister R-5, Humansville R-4, Hurley R-1, Independence, Jefferson City, Kansas City, Kennett #39, King City R-1, Kingston 42, Kirbyville R-VI, Laclede County R-1, Laredo R-7, Lee Summit, Leeton R-10, Lewis County C-1, Lindbergh, Lonedell R-14, Macon County R-1, Macon County R-4, Malta Bend, Mehville, Mexico, Middle Grove C-1, Midway R-1, Milan C-2, Moberly, Monroe City R-I, Morgan County R-2, New Haven, Nixa, North St. Francois Co. R-1, Northeast Nodaway R-5, Odessa R-VII, Oregon-Howell R-III, Orrick R-11, Osage County R-II, Osborn R-O, Parkway, Pattonville, Pettis County R-12, Pierce City, Plato R-5, Princeton R-5, Raymore-Peculiar R-III, Raytown, Reeds Springs R-IV, Renick R-5, Richland R-1, Riverview Gardens, Salisbury R-4, Sarcoxie R-2, Scotland County R-I, Sedalia, Seymour R-2, Shelby County R-4, Shell Knob #78, Sikeston, Silex, Slater, Smithville R-2,

ASSUMPTION (continued)

Special School District of St. Louis County, Spickard R-II, Springfield, St Joseph, St Louis, St. Charles, St. Elizabeth R-4, Sullivan, Tipton R-6, Valley R-6, Verona R-7, Warren County R-3, Warrensburg R-6, Webster Groves, Westview C-6 and the Wright City R-2 School District did not respond to **Oversight's** request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
GENERAL REVENUE FUND			
<u>Transfer Out - DOLIR - DWC</u>	<u>(\$163,134)</u>	<u>(\$33,442)</u>	<u>(\$34,278)</u>
NET EFFECT ON GENERAL REVENUE FUND	<u>(\$163,134)</u>	<u>(\$33,442)</u>	<u>(\$34,278)</u>
 WORKERS' COMPENSATION FUND			
<u>Transferred In - General Revenue</u>	\$163,134	\$33,442	\$34,278
<u>Revenue reduction - DOLIR</u> Premium reduction - Shareholders with 40% or greater interest in S Corporations - Section 287.037	Up to <u>(\$64,333)</u>	Up to <u>(\$128,665)</u>	Up to <u>(\$128,665)</u>
<u>Costs - DOLIR - DWC</u> ITSD - DWC AICS changes	<u>(\$163,134)</u>	<u>(\$33,442)</u>	<u>(\$34,278)</u>
NET EFFECT ON WORKERS' COMPENSATION FUND	<u>Up to (\$64,333)</u>	<u>Up to (\$128,665)</u>	<u>Up to (\$128,665)</u>
 SECOND INJURY FUND			
<u>Revenue reduction - DOLIR</u> Premium reduction - Shareholders with 40% or greater interest in S Corporations - Section 287.037	Up to <u>(\$385,994)</u>	Up to <u>(\$771,987)</u>	Up to <u>(\$771,987)</u>
ESTIMATED NET EFFECT ON SECOND INJURY FUND	<u>Up to (\$385,994)</u>	<u>Up to (\$771,987)</u>	<u>Up to (\$771,987)</u>

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

LEGAL EXPENSE FUND

<u>Savings - Reduction in Claims</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
--------------------------------------	-----------------------	-----------------------	-----------------------

ESTIMATED NET EFFECT ON LEGAL EXPENSE FUND	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
---	------------------------------	------------------------------	------------------------------

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

LOCAL POLITICAL SUBDIVISIONS

<u>Savings - Reduction of Insurance Liability Premiums and Smaller Claims</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
---	-----------------------	-----------------------	-----------------------

ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
---	------------------------------	------------------------------	------------------------------

FISCAL IMPACT - Small Business

This proposal could impact small businesses. It defines the term “maximum medical improvement” (MMI) and provides for temporary total disability (TTD) or temporary partial disability benefits to continue until an employee reaches MMI. It also caps the TTD benefit at MMI but no more than 400 weeks during the continuation of the disability.

FISCAL DESCRIPTION

Under this act, for the purposes of workers' compensation laws, the term "maximum medical improvement" is defined as the point at which the injured employee's medical condition has stabilized and can no longer reasonably improve.

Furthermore, in the case of temporary total and temporary partial disability benefits, such benefits shall only continue until the employee reaches maximum medical improvement. The act further stipulates that, in the case of temporary total disability, an employer shall only be required to pay compensation until the employee reaches maximum medical improvement, but in no event more than 400 weeks.

The act modifies provisions relating to compromise settlements under workers' compensation laws. For all compromise settlements offered after a claimant has reached maximum medical improvement, such claimants have 6 months after receiving an initial permanent disability rating from either the employer's physician or the physician chosen by the claimant, to acquire a rating

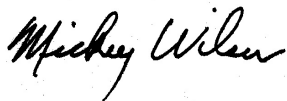
FISCAL DESCRIPTION (continued)

from a second physician of his or her own choosing. Absent extenuating circumstances, if after 6 months the claimant has not acquired a second rating then any compromise settlement entered into shall be based upon the initial rating.

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

Department of Labor and Industrial Relations - Division of Worker's Compensation
Department of Insurance, Financial Institutions and Professional Registration
Office of Administration
Attorney General's Office
Department of Conservation
Department of Transportation
Joint Committee on Administrative Rules
Office of Secretary of State
Office of State Courts Administrator
Office of Prosecution Services
State Public Defender's Office
Department of Public Safety - Highway Patrol
City of Kansas City
Callaway County
Missouri State University
Missouri State University
Northwest Missouri State University
State Technical College of Missouri
Truman State University
University of Central Missouri
University of Missouri
School Districts of:
Everton R-III
Kearney R-I
Kirksville R-III
West Plains R-VII



Mickey Wilson, CPA
Director

Ross Strobe
Assistant Director

April 18, 2017

April 18, 2017