

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0353-02
Bill No.: SB 65
Subject: Liability; Civil Procedure; Courts; Medical Procedures and Personnel; Health Care Professionals
Type: #Updated
Date: March 25, 2019
#To update possible effect on the Tort Victims' Compensation Fund

Bill Summary: This proposal modifies provisions regarding punitive damages.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	\$0 to may exceed \$2,861,500	\$0 to may exceed \$2,861,500	\$0 to may exceed \$2,861,500
Total Estimated Net Effect on General Revenue	\$0 to may exceed \$2,861,500	\$0 to may exceed \$2,861,500	\$0 to may exceed \$2,861,500

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
#Tort Victims' Compensation Fund	\$0 to may exceed (\$1,430,750)	\$0 to may exceed (\$1,430,750)	\$0 to may exceed (\$1,430,750)
#Total Estimated Net Effect on Other State Funds	\$0 to may exceed (\$1,430,750)	\$0 to may exceed (\$1,430,750)	\$0 to may exceed (\$1,430,750)

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
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 2020	FY 2021	FY 2022
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Corrections (DOC)** assume an unknown savings from this proposal. The DOC state it could reduce the potential pay out on punitive damages for medical or for other reasons should the DOC get sued.

Oversight will assume other state agencies might also benefit from the changes in this proposal. Over the last 4 years, \$11,446,000 has been awarded for punitive damages and paid from the Legal Expense Fund. This averages to be \$2,861,500 (\$11,446,000/4) each year. Awards for punitive damages going forward may or may not be affected from this proposal. Therefore, Oversight will range the amount of savings impact to various state agencies from \$0 to may exceed \$2,861,500 each year.

Cases in the past four years in which punitive damages have been awarded by a court and paid from the LEF:

Date Paid	Punitive Damages	Case	Claim(s)
4/13/2015	\$3,000,000	<i>Lee v. Albert Lee Borders</i> , No 4:09-cv-1977-TIA (E.D. Missouri)	42 U.S.C. §1983
6/24/2015	\$60,000	<i>Kudlinski v. Missouri Dep't of Corrections</i> , No. 11SL-CC04793 (St. Louis County Circuit Court)	MHRA (Missouri Human Rights Act)
3/23/2016	\$1,250,000**	<i>Fuchs v. Missouri Department of Revenue</i> , No. 11AC-CC00486-01 (Cole County Circuit Court)	MHRA
7/31/82017	\$3,500,000**	<i>Beverly Wilkins v. Board of Regents of Harris-Stowe State University</i> , No ED104354 (St. Louis County Circuit Court)	MHRA
8/11/2017	\$55,000	<i>Letterman v. William Burgess, et al.</i> , No 5:12-cv-06136-NKL (W.D. Missouri).	42 U.S.C. §1983
12/11/2017	\$5,000	<i>Thompson v. Kyle Webb, et al.</i> , No 4:14-cv-1987-JCH (E.D. Missouri).	42 U.S.C. §1983
2/22/2018	\$1,000,000**	<i>Hesse v. Missouri Department of Corrections</i> , No. 1416-CV07836 (Jackson County Circuit Court)	MHRA
3/8/2018	\$1,575,000**	<i>Kerr v. Missouri Veterans Commission</i> , No. 11AC-CC00436 (Cole County Circuit Court)	MHRA
6/14/2018	\$1,000	<i>Ernest Williams v. Don Roper, et al.</i> , No. 4:13-cv-02440 (E.D. Missouri).	42 U.S.C. §1983
10/3/2018	\$1,000,000**	<i>Mignone v. Department of Corrections</i> , No. 12DK-CC00152 (DeKalb County Circuit Court).	MHRA

*Source- AGO

**portions of the punitive award was paid to the Tort Victims Compensation Fund.

ASSUMPTION (continued)

#Oversight notes in §537.675.3 it states that 50% of the punitive damage final judgment, after deducting attorney's fees and expenses, shall go into the Tort Victims' Compensation Fund (0622). This proposal suggests with an average savings to the General Revenue Fund that may exceed \$2,861,500, this would also reduce the amount going into the Tort Victims' Compensation Fund that may exceed \$1,430,750 ($\$2,861,500 * 50\%$). Therefore, Oversight will reflect a reduction to the Tort Victims' Compensation Fund of \$0 to may exceed \$1,430,750 each year.

In response to similar legislation from 2018, Perfected HCS for HB 2119, officials at the **Office of the Attorney General (AGO)** assumed that any potential costs arising from this proposal can be absorbed with existing resources. The AGO may seek additional appropriations if there is a significant increase in litigation.

Officials at the **Office of the State Courts Administrator**, the **Department of Revenue**, the **Department of Health and Senior Services**, the **Department of Social Services**, the **Department of Mental Health**, the **Department of Insurance, Financial Institutions and Professional Registration**, the **Office of the State Public Defender** and the **Office of Prosecution Services** each assume no fiscal impact to their respective agencies from this proposal.

Oversight notes that the Office of the State Courts Administrator, the Office of the Attorney General, the Department of Revenue, the Department of Health and Senior Services, the Department of Social Services, the Department of Mental Health, the Department of Insurance, Financial Institutions and Professional Registration, the Office of the State Public Defender and the Office of Prosecution Services each has stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GENERAL REVENUE			
<u>Savings</u> - Various State Agencies - potential reduction on pay outs of punitive damages	\$0 to may exceed <u>\$2,861,500</u>	\$0 to may exceed <u>\$2,861,500</u>	\$0 to may exceed <u>\$2,861,500</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	\$0 to may exceed <u>\$2,861,500</u>	\$0 to may exceed <u>\$2,861,500</u>	\$0 to may exceed <u>\$2,861,500</u>
#TORT VICTIMS COMPENSATION FUND			
<u>#Loss</u> - Various State Agencies - potential reduction from pay outs of punitive damages	\$0 to may exceed <u>(\$1,430,750)</u>	\$0 to may exceed <u>(\$1,430,750)</u>	\$0 to may exceed <u>(\$1,430,750)</u>
#ESTIMATED NET EFFECT ON TORT VICTIMS' COMPENSATION FUND	\$0 to may exceed <u>(\$1,430,750)</u>	\$0 to may exceed <u>(\$1,430,750)</u>	\$0 to may exceed <u>(\$1,430,750)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Certain small businesses in litigation could be impacted by this proposal.

FISCAL DESCRIPTION

This act modifies provisions relating to punitive damages.

PUNITIVE DAMAGES - GENERAL (510.259, 510.263, 510.265)

The act provides that punitive damages shall only be awarded if the plaintiff proves by clear and convincing evidence that the defendant intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others, and the plaintiff is awarded more than nominal damages. Punitive damages may only be awarded against an employer due to an employee's conduct in certain situations, as provided in the act.

A claim for punitive damages shall not be contained in the initial pleading and may only be filed as a written motion with permission of the court no later than 120 days prior to the final pretrial conference or trial date. The written motion for punitive damages must be supported by evidence. A pleading seeking a punitive damages award may be filed only after the court determines that the trier of fact is likely to conclude that the standards, as provided in the act, for punitive damages have been met.

Currently, in jury trials involving a claim for punitive damages there is a bifurcated trial. In the first stage, the jury determines liability and amount for compensatory damages and the liability for punitive damages, and the amount of punitive damages is determined in the second stage. This act provides that after an award of compensatory damages has been made in the first stage, then the court shall determine whether punitive damages may be considered by the jury. After the court's determination, the jury will determine whether to award punitive damages and the amount.

Currently, if a defendant has previously paid punitive damages in another state for the same conduct, following a hearing the court may credit the jury award of punitive damages by the amount previously paid. This act provides that the defendant may be credited for punitive damages also paid in federal court.

These provisions do not apply to claims for unlawful housing practices under the Missouri Human Rights Act.

PUNITIVE DAMAGES - MEDICAL MALPRACTICE (538.205, 538.210)

The act modifies the definition of "punitive damages" as it is used in sections of law relating to actions for damages against a health care provider for personal injury or death caused by the rendering of health care services.

In order to be awarded punitive damages, the jury must find by clear and convincing evidence that the health care provider intentionally caused damage or demonstrated malicious misconduct.

FISCAL DESCRIPTION (continued)

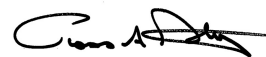
Evidence of negligence, including indifference or conscious disregard for the safety of others, does not constitute a basis for a punitive damage award.

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 Corrections
Office of the Attorney General
Office of the State Courts Administrator
Department of Revenue
Department of Health and Senior Services
Department of Social Services
Department of Mental Health
Department of Insurance, Financial Institutions and Professional Registration
Office of the State Public Defender
Office of Prosecution Services

Kyle Rieman
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March 25, 2019



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March 25, 2019