

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. NO. 0315-02  
BILL NO. SCS for SB's 39 and 269  
SUBJECT: Civil Procedure; Liability; Courts  
TYPE: Original  
DATE: February 12, 2001

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**FISCAL SUMMARY**

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ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Legal Services for Low-Income People Fund	Unknown	Unknown	Unknown
Tort Victims' Compensation Fund	(\$327,056 to Unknown)	(\$335,751 to Unknown)	(\$344,269 to Unknown)
<b>Total Estimated Net Effect on <u>All</u> State Funds</b>	<b>(\$327,056)</b>	<b>(\$335,751)</b>	<b>(\$344,269)</b>

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses  
This fiscal note contains 6 pages.

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**FISCAL ANALYSIS**

ASSUMPTION

In response to a similar proposal (SB 39), officials from the **Office of State Courts Administrator, Office of State Public Defender, Office of Prosecution Services, Department of Natural Resources, Office of State Treasurer, Office of Administration - Division of Accounting** and the **Office of Administration - Division of General Services** assume the proposed legislation would have no fiscal impact on their agencies.

In response to a similar proposal (SB 39), officials from the **Department of Revenue** assume the proposed legislation would have little or no administrative impact on their agency

Officials from the **Department of Social Services** and the **Office of Administration - Division of Budget and Planning** assume the proposed legislation would have no fiscal impact on their agencies.

In response to a similar proposal (SB 39), officials from the **Office of the Attorney General** noted that they do not know the number of claims that will be appealed to the LIRC and therefore, they do not know how many cases they will defend. Additionally, officials from the AGO do not know how many cases they might bring in subrogation. Officials assume that this number will be minimal and that costs can be absorbed.

Officials from the **Department of Labor and Industrial Relations - Division of Workers' Compensation** (DOL) assume the proposed legislation establishes responsibility in the Division of Workers' Compensation to administer and adjudicate claims of uncompensated tort victims against the Tort Victims' Compensation Fund.

The DOL will establish and maintain a Tort Victims' Compensation Unit to receive, process and make awards for uncompensated tort victims. The DOL will also establish and maintain a procedure to adjudicate these claims.

The impact of this program is very difficult to assess. In FY 98, the Office of the State Courts Administrator reported that 20,282 tort cases were disposed of. Over the last three fiscal years the average number of tort cases disposed of is 19,264 cases. This includes settlements, dismissals, defendants' verdicts, plaintiffs' verdicts, and default judgments. It is impossible to determine how many cases will result in a verdict for the plaintiff that are uncollectible. This type of data is not collected. It is also impossible to determine how many uninsured motorist claims will be filed as tort cases because of accessibility to these funds. Attempts to obtain this type of information were made with the Missouri Association of Trial Attorneys and the

ASSUMPTION (continued)

Missouri Department of Insurance, respectively concerning SB 464 in the 1999 legislative session.

Funding for this program on an ongoing basis is questionable. The statute provides for 65% of punitive damages awards in final judgments to be paid to the Division into the Tort Victims' Compensation Fund. Currently, there are moneys over seven million dollars (\$7,000,000) in the Fund. This funding came from two unusual cases in Kansas City where the plaintiffs and defendants absolutely refused to settle the claim. This information is from the Attorney General's Office. In most cases, the plaintiff and defendant settle any punitive damages, even after a jury award. This usually happens while the case is on appeal. Because the case is settled, there would be no final judgment and no payment to the Fund.

Since almost all cases involving tort claims involve claimant attorneys, it is assumed the potential for claims in cases of unsatisfied plaintiffs' judgements will be very high. For the purpose of this fiscal note, the DOL assumes 10% of all cases disposed of will result in claims against the fund. Based on information previously cited, this is an average of 1,926 claims filed per year ( $19,264 \times 10\%$ ). This average is very close to the number of claims filed with the DOL's Crime Victims' Compensation program each year. In FY 96 a total of 1,652 claims were disposed of, in FY 97 a total of 2,206 claims were disposed of, in FY 98 a total of 1,688 claims were disposed of by the Crime Victims' Compensation program.

The DOL assumes the parameters of the Tort Victims' Compensation program in verifying medical, funeral and legal bills, verifying court action and other requirements to establish the validity of a claim under this proposal are also very similar to the manner in which crime victim's compensation claims are handled. For that reason, DOL assumed staffing needs similar to the Crime Victims' Compensation program would be needed to handle the claims process. This includes one (1) Program Manager, one (1) Clerk Typist IV and five (5) Clerk Typist III's. To ensure proper funding, this program must also employ one (1) Legal Counsel to ensure compliance with the statutory provisions and the myriad of legal issues involved in tort claims to ensure proper funding. In the original fiscal note for SB 39, the Division projected the need for three (3) Clerk Typist III's. In the SCS for SB 39, the Division added two additional Clerk Typist III's. The original bill (SB 39) required the claimant to furnish medical records while the SCS for SB 39 places this burden on the medical provider. Consequently, the shift in burden will require the Division to contact medical providers to obtain medical records. In any given case, it is expected that clerical staff will need to contact 3 to 10 various medical providers to get the requisite medical records.

#### ASSUMPTION (continued)

In reference to expense and equipment requests of the DOL, **Oversight** has eliminated the rent

expense, assuming these employees could be located in existing space; eliminated the office equipment associated with locating these employees separately from other DOL employees; and reduced the estimated cost of PC printers.

Oversight assumes 35% of all payments received by the Tort Victims' Compensation Fund will be transferred to the Legal Services for Low-Income People Fund which is created in this proposal; therefore, Oversight has reflected unknown income to the Legal Services for Low-Income People Fund and an unknown loss to the Tort Victims' Compensation Fund.

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
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**LEGAL SERVICES FOR LOW-INCOME PEOPLE FUND**

<u>Income</u> - Punitive damage awards Transfer from Tort Victims' Compensation Fund	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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**TORT VICTIMS' COMPENSATION FUND**

<u>Loss</u> - Punitive damage awards Transfer to Legal Services for Low-Income People Fund	(Unknown)	(Unknown)	(Unknown)
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<u>Cost</u> - Labor and Industrial Relations Personal Service (6 FTE)	(\$197,106)	(\$242,440)	(\$248,501)
Fringe Benefits	(65,695)	(80,805)	(82,825)
Equipment and Expense	(64,255)	(12,506)	(12,943)
Total costs - DOL	(\$327,056)	(\$335,751)	(\$344,269)

<b>ESTIMATED NET EFFECT ON TORT VICTIMS' COMPENSATION FUND</b>	<u>(\$327,056 to</u>	<u>(\$335,751 to</u>	<u>(\$344,269 to</u>
	<u>Unknown)</u>	<u>Unknown)</u>	<u>Unknown)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
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FISCAL IMPACT - Small Business

No direct fiscal impact on small businesses would be expected due to this proposal.

DESCRIPTION

This proposal establishes procedures for collection of moneys into, and disbursement of moneys from, the Tort Victims' Compensation Fund. Any person filing a punitive damages claim in a Missouri state court must notify the Attorney General of the claim. The state may not intervene in the lawsuit but, in the event of a judgment for punitive damages, the State has a lien against one-half (50 percent) of the punitive damages award, which funds are collected and deposited into the Tort Victims' Compensation Fund. In the event of a pre-judgment settlement between the parties, the state has no claim or lien.

This proposal establishes the Legal Services for Low-Income People Fund which is to receive 35 percent of the moneys received by the Tort Victims' Compensation Fund. These moneys shall be distributed to legal services organizations in Missouri which are recipients of federal Legal Services Corporation funding and shall be used by the legal services organizations to provide legal services to their low-income population, in the manner approved by the board of directors of each legal services organization.

This proposal directs that 65 percent of the moneys received by the Tort Victims' Compensation Fund be distributed to the Division of Workers' Compensation to assist uncompensated tort victims. To qualify as an "uncompensated tort victim", a person must meet several criteria. Claims for fund proceeds must be filed with the Division within two years of obtaining a court judgment for personal injury or wrongful death. This proposal establishes application requirements for requests for disbursement of funds and it affords the Division of Workers' Compensation discretion in awarding of funds, subject to certain limitations on award amounts, including a \$300,000 per award cap. The Division may determine its awards based upon the applications only, or it may hold evidentiary hearings on any claims.

No incarcerated person may receive an award from the fund during his or her period of incarceration and no application or claim for funds constitutes a lien against the state.

DESCRIPTION (continued)

In the event that there are insufficient funds in the budget of the division for payment of claims of

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uncompensated tort victims to pay all claims in full, claims shall be paid on a pro rata basis.

A party aggrieved by a decision of the Division may appeal to the Labor and Industrial Relations Commission. Judicial review may be sought by those aggrieved by a decision of the Commission. The State has rights of subrogation in the event an "uncompensated" tort victim collects partial or total satisfaction from the tortfeasor after having received an award from the Tort Victim's Compensation Fund.

The Division of Workers' Compensation is authorized to promulgate rules and regulations governing application for and distribution of the funds the Division receives from the Tort Victims' Compensation Fund.

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 Workers' Compensation  
Department of Natural Resources  
Department of Revenue  
Department of Social Services  
Office of Administration - Division of Accounting  
Office of Administration - Division of Budget and Planning  
Office of Administration - Division of General Services  
Office of Attorney General  
Office of Prosecution Services  
Office of State Courts Administrator  
Office of State Public Defender  
Office of State Treasurer



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