

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO. 315-05
BILL NO. Perfected SS#2 for SCS for SB's 39 and 269
SUBJECT: Civil Procedure; Liability; Courts
TYPE: Original
DATE: March 8, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Legal Services for Low-Income People Fund	\$1,917,240	Unknown	Unknown
Tort Victims' Compensation Fund	(\$2,244,296)	(\$335,751 to Unknown)	(\$344,269 to Unknown)
Total Estimated Net Effect on <u>All</u> State Funds	(\$327,056)	(\$335,751)	(\$344,269)

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

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

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

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator, Office of Administration - Division of Budget and Planning, Office of Prosecution Services, Department of Transportation, Department of Natural Resources, 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 similar legislation (315-01), officials from the **Office of State Public Defender** assume the proposed legislation would have no fiscal impact on their agency.

Officials from the **Department of Revenue** assume the proposed legislation would have little or no administrative impact on their agency

Officials from the **Office of State Treasurer** assume the proposed legislation would have no fiscal impact on their agency. However, officials noted that they are assuming that the department would not be responsible for the calculation, creation, or distribution of payments.

Officials from the **Department of Social Services - Division of Legal Services** assume the proposed legislation would not have a fiscal impact on their agency. Officials noted that if funds are available to Legal Services Corporations through the Tort Victims' Compensation Fund, it is assumed that the department will continue to be involved in the disbursement of general revenue funds appropriated by the Legislature for Legal Services Corporations and ensuring that the Legal Services Corporations submit required reports to the Legislature.

Officials from the **Office of Secretary of State** assume this bill creates the Legal Services for Low-Income People Fund. The Division of Workers' Compensation will promulgate rules to implement this bill. Based on experience with other divisions, the rules, regulations and forms issued by the Division of Workers' Compensation could require as many as 26 pages in the *Code of State Regulations*. For any given rule, roughly half again as many pages are published in the *Missouri Register* as in the *Code* because cost statements, fiscal notes and the like are not repeated in Code. These costs are estimated. The estimated cost of a page in the *Missouri Register* is \$23.00. The estimated cost of a page in the *Code of State Regulations* is \$27.00. Therefore, the estimated costs for FY 02 are \$1,599. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded or withdrawn.

ASSUMPTION (continued)

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

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 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,

ASSUMPTION (continued)

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. The same remains true in this SS.

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 notes that the balance in the Tort Victims' Compensation Fund as of January 31, 2001 was \$7,373,998. As a result of this proposal, Oversight assumes that 26% of this balance will be transferred to the Legal Services for Low-Income People Fund. This equates to approximately \$1,917,240. Oversight has reflected this figure in the fiscal impact specifications below for FY 02. For FY 03 and FY 04 Oversight has reflected an unknown amount.

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<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

Income - Punitive damage awards
 Transfer from Tort Victims'
 Compensation Fund (26%)

<u>\$1,917,240</u>	<u>Unknown</u>	<u>Unknown</u>
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TORT VICTIMS' COMPENSATION FUND

Loss - Punitive damage awards
 Transfer to Legal Services for
 Low-Income People Fund (26%)

(\$1,917,240)	(Unknown)	(Unknown)
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Cost - Labor and Industrial Relations
 Personal Service (8 FTE)
 Fringe Benefits
 Equipment and Expense
 Total costs - DOL

(\$197,106)	(\$242,440)	(\$248,501)
(65,695)	(80,805)	(82,825)
(64,255)	(12,506)	(12,943)
(\$327,056)	(\$335,751)	(\$344,269)

**ESTIMATED NET EFFECT ON
 TORT VICTIMS' COMPENSATION
 FUND**

<u>(\$2,244,296)</u>	<u>(\$335,751 to Unknown)</u>	<u>(\$344,269 to Unknown)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
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\$0	\$0	\$0
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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. This proposal provides the definition of an "uncompensated tort victim". Any person receiving a final judgement of punitive damages in a Missouri state court must notify the Attorney General of the award. The State has a lien against one-half (50 percent) of the punitive damages awarded, after deduction of attorney's fees and expenses, and of which funds are collected and deposited into the Tort Victims' Compensation Fund.

This proposal establishes the Legal Services for Low-Income People Fund which is to receive 26 percent of the moneys received by the Tort Victims' Compensation Fund, including 26 percent of the money that upon the effective date of this bill is in 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.

This proposal directs that 74 percent of the moneys received by the Tort Victims' Compensation Fund be distributed to the Division of Workers' Compensation to assist uncompensated tort victims. 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.

A claim shall be filed no later than two years after the judgement upon which it is based becomes final and all appeals are final, except with regard to the initial claims period. The initial claims period is the period commencing on August 28, 2001, and ending on December 31, 2002.

This proposal has language in reference to the payment of claims from the fund.

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 by appealing within twenty days of a final decision to the appellate court having jurisdiction in the area where the appellant resides.

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.

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DESCRIPTION (continued)

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 - Division of Legal Services
Department of Transportation
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 Secretary of State
Office of State Courts Administrator
Office of State Public Defender
Office of State Treasurer



Jeanne Jarrett, CPA
Director

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