

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0220-14
Bill No.: HS for SS for SCS for SB 1 & 130
Subject: Drugs and Controlled Substances; Employees-employers; Evidence; Judges; Labor and Industrial Relations Dept.; Liens; Workers Compensation; Motor Carriers; Retirement Systems and Benefits – General
Type: Original
Date: February 28, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	More than \$115,000	More than \$121,450	More than \$128,094
Total Estimated Net Effect on General Revenue Fund	More than \$115,000	More than \$121,450	More than \$128,094

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Workers' Compensation	\$592,545	\$578,374	\$575,690
Second Injury	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Highway	More than \$100,000	More than \$100,000	More than \$100,000
Total Estimated Net Effect on Other State Funds	More than \$100,000	More than \$100,000	More than \$100,000

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	(Unknown) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown

FISCAL ANALYSIS

ASSUMPTIONS

Officials from the **Office of the Attorney General (AGO)** assume that this proposal would make some changes with regard to the prosecution of Workers' Compensation fraud that will impact this office.

The AGO assumes that with respect to criminal penalties for claimants who file concurrent claims for injuries, any potential costs could be absorbed with existing resources.

The AGO further assumes that with respect the burden of proof, the AGO would now be required to demonstrate that the employer "knowingly failed" to insure an employee and that the employer had the "intent to defraud" some individual or entity. AGO assumes that this additional element would significantly impact its burden of proof for non-compliance cases, and would ultimately reduce the number of cases that are successfully prosecuted. AGO assumes that this provision would create additional costs to prosecute those cases, however, AGO assumes that these costs could be absorbed with existing resources.

ASSUMPTIONS (continued)

With respect to preparation of the report on the costs of prosecuting fraud and noncompliance, AGO assumes this provision would create minimal costs that can be absorbed with existing resources.

Oversight assumes there would be a cost of less than \$100,000 per fiscal year to the Department of Corrections for incarceration/probation costs. It would take more than 8 persons convicted of the crime(s) to exceed \$100,000. Oversight assumes there would be less than 8 persons per year convicted of the crime(s) outlined in the amendment.

Officials from the **Department of Health and Senior Services** assume the proposal would have no impact on their organization.

Officials from the **Department of Conservation** (MDC) assume the proposal would have no impact on the Conservation Commission Fund, since MDC has an insignificant number of claims which would be addressed by the proposal.

Officials from the **Department of Transportation** (MODOT) assume the proposal would have an unknown positive impact in excess of \$100,000 per year on the MODOT self-insurance program.

Officials from the **Department of Insurance** assume the proposal would have no impact on their organization.

In response to a previous version of the proposal, officials from the **Office of Administration, Risk Management Section** (OARM) assume the proposed changes to the workers' compensation act have the potential for savings to the state's self-insured workers' compensation program that cannot be determined at this time.

OARM notes that one section of the proposal limits the Second Injury Fund surcharge to 3%. The calendar year 2004 surcharge was 4%; the calendar year 2005 surcharge has been assessed at 3.5%; and the estimated Second Injury Fund tax for 2005 is \$1.5 million. If the 3% maximum assessment would be applied to 2005, the estimated Second Injury Fund tax would be \$1.285 million, resulting in an estimated savings of \$215,000. OARM used a 3% inflation factor to calculate Second Injury Fund surcharge savings of \$215,000 for FY 2006, \$221,450 for FY 2007, and \$228,094 for FY 2008.

ASSUMPTIONS (continued)

The above information assumes that the workers' compensation self-insurer tax rates remain stable, allows for state payroll increases during FY05 and FY06 and the experience modification factor applied to the state remains the same. If the experience modification factor is reduced, greater savings would be realized.

Oversight has indicated a range of savings of more than \$215,000 for FY 2006, more than \$221,450 FY 2007, and more than \$228,094 FY 2008.

Officials from the **Department of Labor and Industrial Relations** (DOLIR) assume the following:

- The change in the definition of accident and injury and the change in compensability could, in the short run, increase the number of contested cases resulting from injured workers filing claims to test the applicability of the new provisions to their injury. This would create additional paperwork for the Division staff but a shift in staff responsibilities and workflow should handle any increase in paper work and can be addressed by current staff levels.
- The provisions of the bill would require a review of current administrative rules and create the need to revise some of those rules. This task would not require any additional staffing.
- The forms currently used for reporting injuries, medical costs and other information required by the Division would have to be revised as will some of the informational brochures that the Division distributes. This would not require any additional staffing.
- Staff would have to be trained on the new requirements as well as changes in the rules and internal procedures that would result. In addition, the Division's computer system will require significant changes to address the proposed changes. These issue can be addressed with current resources.

ASSUMPTIONS (continued)

- The information Specialist (currently 3 FTE) who answer calls to the Division's toll-free information line (currently about 30,000 calls per year) would see a significant increase in the number of calls received, as people seek answers to questions about their cases which were impacted by the legislation or are inquiring about changes in the law and procedures that may affect their cases. This may require additional staff in the short term but the additional staff could be addressed through a shift in current staff from one function to another.
- Since the proposal would reduce the number of cases entering the system on the front end, it would reduce the number of claims filed against the Second Injury Fund creating a cost savings for the Fund. However, without knowing the number of cases that will be affected on the front end it is impossible to determine the extent of the reduction of cases and thus the cost savings for the Second Injury Fund.
- The proposal would require DOLIR to notify in writing each employee who has an open case, of a self-insured employer who has filed for bankruptcy. DOLIR assumes this would require an additional one-half FTE. This is based on the need to make legal interpretations, prepare correspondence to the employees, obtain information and records from various bankruptcy courts, coordinate issues with the debtor's attorney, and to possess sufficient knowledge about workers' compensation, self-insurance and bankruptcy laws to respond to questions from the claimants or their attorneys.
- The proposal would require the claimant to provide to the division and to the guaranty corporation a certified copy of the proof of claim that the claimant has filed with the bankruptcy court. DOLIR would need to develop a procedure to meet the statutory requirements. Also, the records of the underlying workers' compensation case would need to be scanned.
- Based on fiscal years 2002, 2003 and 2004, there would be an average of 10 bankruptcies each year with an average of 1,328 total employees that would require the Division to contact. DOLIR assumes thirty-seven cents per letter for postage and assumes, because of the additional responsibilities, that one-half FTE, legal counsel, would be required along with equipment and supplies.

ASSUMPTIONS (continued)

- Twenty-two legal advisor positions would be eliminated and fourteen new administrative law judge positions would be added.
 1. 22 legal advisors @ \$76,800 = \$1,689,600 plus \$720,783 fringe = \$2,410,383.
 2. 14 administrative law judges @ \$86,400 = \$1,209,600 + \$516,015 fringe = \$1,725,615
 3. Total legal advisor positions, \$2,410,383, minus total administrative law judge positions added, \$1,725,615, equals a savings of \$684,768.
- The projected rates for the Second Injury Fund (SIF) surcharge were 4.5%, 5.5% and 6.5% in fiscal years 2006, 2007 and 2008 respectively. Capping the rate at 3.0% would reduce receipts by \$27,871,046 in CY 2006, \$46,451,744 in CY 2007 and \$65,032,441 in CY 2008.

It is assumed that the proposal would reduce the number of claims and awards from the Second Injury Fund. What is not clear is the amount of the reduction and the timing of the reduction for Second Injury Fund claims.

In addition the proposal would reduce collections from 110% of the previous expenditures to 100%. This would generate less income for the Fund. Considering just this change and no other factors the fund would be periodically deficit in FY 2007.

The Division is unable to determine what the net effect, given all the variables, will be on the Fund. If collections are less than the awards the Division would need to borrow money from the Workers' Compensation Administration Fund.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
GENERAL REVENUE FUND			
<u>Savings</u> - reduction in settlements	More than \$215,000	More than \$221,450	More than \$228,094
<u>Cost</u> – Department of Corrections Incarceration/Probation costs	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>More than</u> <u>\$115,000</u>	<u>More than</u> <u>\$121,450</u>	<u>More than</u> <u>\$128,094</u>
WORKERS' COMPENSATION FUND			
<u>Savings</u> - reduction in personnel cost	<u>\$592,545</u>	<u>\$578,374</u>	<u>\$575,690</u>
ESTIMATED NET EFFECT ON WORKERS' COMPENSATION FUND	<u>\$592,545</u>	<u>\$578,374</u>	<u>\$575,690</u>
SECOND INJURY FUND			
<u>Savings</u> - reduction in settlements	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
ESTIMATED NET EFFECT ON SECOND INJURY FUND	<u>Unknown to</u> <u>(Unknown)</u>	<u>Unknown to</u> <u>(Unknown)</u>	<u>Unknown to</u> <u>(Unknown)</u>
HIGHWAY FUND			
<u>Savings</u> - reduction in settlements	More than \$100,000	More than \$100,000	More than \$100,000
ESTIMATED NET EFFECT ON HIGHWAY FUND	<u>More than</u> <u>\$100,000</u>	<u>More than</u> <u>\$100,000</u>	<u>More than</u> <u>\$100,000</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
LOCAL GOVERNMENTS			
<u>Savings</u> - reduction in settlements	<u>Unknown to</u> <u>(Unknown)</u>	<u>Unknown to</u> <u>(Unknown)</u>	<u>Unknown to</u> <u>(Unknown)</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	<u>(Unknown) to</u> <u>Unknown</u>	<u>(Unknown) to</u> <u>Unknown</u>	<u>(Unknown) to</u> <u>Unknown</u>

FISCAL IMPACT - Small Business

This proposal could have a positive impact to small businesses if it results in lower Second Injury Fund surcharges and a reduction in compensable injuries and disabilities.

DESCRIPTION

This proposal would amend various provisions of Missouri Workers Compensation Law:

- The proposal would add restrictive definitions of injury and disease under the Workers Compensation Law.
- A work-related accident would be compensable only if it was the "prevailing factor" in causing a work-related injury or disability.
- A cardiovascular, pulmonary, or respiratory disease or myocardial infarction would be regarded as compensable injuries only if an accident is the prevailing factor in causing the disability or physical or mental condition.
- The proposal would attempt to abrogate certain case law and legal doctrines commonly applied to Workers Compensation cases.
- Motor carriers would not be considered employers of vehicle lessors or the lessors' employees.

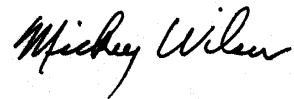
DESCRIPTION (continued)

- Alcohol-related injuries would not be compensable. The reduction in benefits for violation of a drug or alcohol policy would be increased from 15% to 50%. In addition, where an employee has a blood alcohol content (BAC) above .08, the alcohol would be the presumed proximate cause. A preponderance of the evidence standard would apply to rebut such presumption.
- Employees would be required to complete vocational testing and assessment.
- Disabilities would be certified by a physician using "objective relevant medical findings".
- Insurance companies or self-insured employers would be allowed to enter into voluntary settlements with claimants so long as an administrative law judge or legal advisor finds that the claimant understands the settlement and so long as it was not the result of "undue influence or fraud."
- No proceedings could be brought against an employer without thirty days' notice unless the Division or the Commission finds that the lack of notice was not prejudicial to the employer.
- Second Injury Fund surcharges would be limited to three percent of the policyholder or self-insured workers' compensation program net deposits, net premiums, or net assessments.
- The Labor and Industrial Relations Commission would be required to apply an impartial standard in deciding cases.
- An employee would be required to submit a claim against an insolvent self-insured employer to the bankruptcy court, the Missouri Private Sector Self-Insurance Guaranty Corporation, and to the Division of Workers Compensation.
- All legal advisor positions (currently there are twenty-two) would be eliminated and fourteen new administrative law judges (currently there are 26) would be added for a total of forty administrative law judges

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 the Attorney General
Office of Administration
 Risk Management Section
Department of Conservation
Department of Economic Development
 Public Service Commission
Department of Insurance
Department of Labor and Industrial Relations
Department of Transportation



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February 28, 2005