

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3452-05
Bill No.: SCS for SB 929
Subject: Attorney General; State; Employer - Employee; Employment Security;
 Immigration; Labor and Industrial Relations Department; Revenue Department;
 Taxation and Revenue - Income; Workers Compensation.
Type: Original
Date: February 15, 2008

Bill Summary: This proposal bars employers from misclassifying employees as independent contractors.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 5 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on FTE			

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Labor and Industrial Relations (DOLIR)** assume the Division of Employment Security (DES) is charged with administering the unemployment insurance (UI) program in Missouri, as set forth in Chapter 288 RSMo. Establishing employers' UI tax accounts and issuing determinations concerning the proper reporting of workers and workers' wages are part of the Division's responsibilities. Only reviews and determinations regarding employers (those that would meet the definitions as defined in Chapter 288 RSMo. of "employers" and "employment") could be funded using the UI grant received from the United States Department of Labor (USDOL). Any other reviews and determinations would require funding from another money source.

DOLIR assumes it would establish a complaint form, conduct investigations pertaining to the misclassification of workers, make determinations concerning the workers' status, and provide information to the Attorney General's office.

DOLIR anticipates this proposed legislation will increase its workload. The number of complaints that would be generated from this proposed legislation is unknown; however, DOLIR estimates it would require one half FTE (Contributions Sup II) to cross-check the complaint against any employer records it maintains and also cross-check the complaint against any records maintained by the department of revenue. DOLIR would also need two (2) additional FTE (Investigator I's) to conduct investigations pertaining to the misclassification of workers, make determinations concerning the workers' status and provide the information to the Attorney General's office. DOLIR assumes the personal service dollars and the expenses associated with the two and a half additional FTE will be funded using general revenue dollars for the first year of implementation. DOLIR also assumes adequate funding will be available in the Missouri Worker Protection Fund in the following years to administer the proposed legislation.

Oversight assumes that since the number of complaints is unknown and that the proposed legislation requires DOLIR to check its own records and those of the Department of Revenue it can absorb the cost of this program with existing staff. Should a large number of complaints be filed then DOLIR could request funding through the appropriation process.

In response to a previous version of this bill, officials at the **Office of the Attorney General (AGO)** assume that the cost is unknown to follow up on complaints alleging employers are misclassifying workers. AGO assumes that any costs necessary to investigate and enforce these provisions shall not exceed \$100,000. As AGO develops protocols to handle complaints, AGO may seek additional appropriations to fulfill its responsibilities.

ASSUMPTION (continued)

Officials at the **Department of Revenue, Department of Insurance, Financial Institutions and Professional Registration** and the **Office of the State Treasurer** assume that there is no fiscal impact from this proposal.

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.

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.

<u>FISCAL IMPACT - State Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

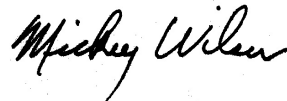
The act bars employers with 5 or more employees from knowingly misclassifying employees. Employers must submit federal IRS 1099-MISC forms to the Department of Revenue and penalties for failing to do so are provided. The Attorney General has the power to investigate alleged misclassifications and enforce the section.

The state carries the burden of proving that the employer misclassified the worker and there is a rebuttable presumption that an unauthorized alien is an employee under the act and shall be treated so if the employer cannot produce an I-9 form verifying the legal status of the worker or other forms verifying the individual is an independent contractor. Injunctions may be sought and employers shall be charged \$50 per day per misclassified worker up to a maximum of \$50,000 for violations. Penalties are increased for repeat offenders in an amount of \$100 per day per misclassified worker up to \$100,000.

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 State Treasurer
Department of Revenue
Department of Labor and Industrial Relations
Office of the Attorney General
Office of the Secretary of State
Department of Insurance, Financial Institutions and Professional Registration



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Director
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