

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3608-06
Bill No.: HCS for SCS for SB 901
Subject: Employees - Employers; Workers' Compensation
Type: Original
Date: April 27, 2008

Bill Summary: This proposal modifies workers' compensation payments to dependents.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
General Revenue	\$235,925	\$235,925	\$235,925
Total Estimated Net Effect on General Revenue Fund	\$235,925	\$235,925	\$235,925

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Workers Compensation Administration Fund	\$0	(\$72,110)	(\$72,110)
Conservation Fund	Unknown	Unknown	Unknown
Road Fund	Unknown	Unknown	Unknown
Second Injury Fund	Unknown greater than \$100,000 to (\$25,000)	Unknown greater than \$100,000 to (\$25,000)	Unknown greater than \$100,000 to (\$25,000)
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown greater than \$100,000 to (\$25,000)	Unknown greater than \$100,000 to (\$97,110)	Unknown greater than \$100,000 to (\$97,110)

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
Labor Commission	0 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	0 FTE	1 FTE	1 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

In response to a previous version of this bill, officials at the **Department of Labor and Industrial Relations (DOLIR)** assume this legislation abrogates a Supreme Court decision regarding the Second Injury Fund (SIF). DOLIR at this time is unable to determine how the recent Missouri Supreme Court decision in *Schoemehl v. Treasurer of the State of Missouri*, 217 S.W. 3d 900 (Mo 2007) will impact Second Injury Fund payouts for cases involving permanent total disability benefits over the long term. A recent Actuarial Review of the SIF (completed July 30, 2007) determined that this court decision, which this legislation abrogates, "...has a relatively insignificant impact on expected calendar payments for the next five years... [2008 to 2012]." Since this legislation abrogates the Schoemehl decision, such action would create a savings for the Fund, however, DOLIR cannot determine the amount of savings.

This bill transfers the defense of the SIF from the Attorney General's Office to the Division of Workers' Compensation (DWC). Currently the Office of Attorney General employs 46 FTE's to defend claims against the SIF. DOLIR does not at this time know if the proposal will require the full 46 FTE's to carry out the provisions of the bill. Currently there are 28,698 SIF cases pending. Based on appropriations for FY 2008 the cost of the 46 FTE's transferred from the AGO to the DWC is \$3,252,084. Of that amount, \$2,026,305 is personal service and \$1,225,779 is expense and equipment. Without knowing the amount of rental space needed, the amount of computer hardware and other information technology requirements, the amount of office supplies needed, or the number of support personnel required, DOLIR assumes that the \$3,252,084 would be the minimum cost to the DWC.

The bill requires an annual actuarial study of the SIF. Currently the law requires an actuarial study every three years. The average costs of past actuarial studies of the SIF is \$25,000. Since this cost would have to be incurred annually DOLIR would incur additional annual costs as a result.

The bill limits lump sum payments for Permanent Total Disability (PTD) to \$20,000. The current limit is \$60,000. The Department is unable to determine the fiscal impact of this change. If a PTD employee foregoes a lump sum payment and opts for a lifetime ongoing payment there possibly could be a greater long term liability and cost to the SIF.

The bill also eliminates Permanent Partial Disability (PPD) as a SIF benefit after August 28, 2008. For fiscal year 2007, the SIF paid out \$17,653,326.38 in PPD benefits. After all pending PPD claims are paid this would be the minimum amount saved by the SIF. The savings would increase over years as pending PPD claims are paid.

ASSUMPTION (continued)

The bill limits access to the SIF for Permanent Total Disability claims to those who have a preexisting condition from active military duty and those who have a preexisting condition from a previous Missouri work-related injury. DOLIR believes limiting access in this way will reduce the number of permanent total disability claims and those the amount of payouts for that benefit type. However, the Department is unable to determine at this time what savings to the SIF will result.

Finally, DOLIR anticipates a fiscal impact to the Labor and Industrial Relations Commission for fiscal years 2010 and onward equivalent to the cost of salary and benefits for one attorney with a salary of \$50,000.

Officials at the **Office of Administration** assume the State of Missouri's self-insured workers' compensation program, the Central Accident Reporting Office (CARO) covers state employees (excluding MoDOT, Missouri State Highway Patrol and University of Missouri systems). CARO is currently obligated to ongoing weekly benefits to 14 past state employees deemed to be permanently and totally disabled. Of these, 13 cases have the potential for extended dependent obligations at the time of death of the employee resulting from the Schoemehl decision. Currently CARO does not maintain dependent status on these 13 cases. In addition to these cases, CARO has identified an additional 19 cases that may result in permanent total disability in the very near future.

The U.S. Census Bureau indicates of the total households of one wage earner and two earners or more, single wage earner households account for 50% of the total. Applying the 50% to the 13 cases, 6.5 cases may be single wage earner households, thus at the time of death of the employee, the spouse may be a sole dependent. The average weekly compensation rate for these cases is \$252.35 multiplied by the 6.5 cases equate to \$1,640.28 in weekly benefits. Of the additional 19 cases, 9.5 cases would be considered as possible single wage earner households with spouses as sole dependents. The average weekly compensation rate for these cases is \$304.92 multiplied by the 9.5 cases equate to \$2,896.74. Combining the two sets, the total weekly obligation to extend benefits to sole dependents is \$4,537.02 or \$235,925.04 annually.

The length of this obligation is difficult to assume. However assuming the employee should die of natural causes and that the spouse may be near the age of the employee, we are projecting 10 additional years for the remaining spouse. Therefore the savings would be for approximately 10 years for the cases identified. This does not take into consideration any minors that may be deemed to be sole dependents at time of the employee's death.

ASSUMPTION (continued)

While the state, to date, has not yet incurred any additional cost due to the Schoemehl decision, we do assume an annual cost savings of approximately \$235,925 to the State of Missouri with the proposed legislation. No cost inflator is utilized in that weekly compensation rates remain the same throughout the period of obligation

Officials at the **Office of the Attorney General (AGO)** assume that fiscal costs for this proposal are not determinable because of the new provision found within Section 287.220.2, which allows outside counsel to defend the Second Injury Fund. As a result, the AGO assumes costs are unknown. AGO states that when outside counsel was similarly used by a previous administration, total costs exceeded \$1 million each year.

Since the employment of private legal counsel is limited to only cases in which a conflict of interest arises, **Oversight** assumes any costs arising from this rare occurrence can be absorbed with existing resources.

Officials at the **Missouri Department of Transportation (MoDOT)** assume that MHTC is self-insured to provide workers' compensation coverage to employees. This legislation will have a positive fiscal impact on MoDOT/MHTC if it passes.

Officials at the **Department of Conservation (MDC)** assume a positive fiscal impact on MDC funds if it passes.

Officials at the **Legislative Research** assume additional but non-substantial costs of additional staff time, copying and mailing expenses.

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

Section 287.220 would transfer the responsibility of defending the Second Injury Fund from the Office of the Attorney General to the Department of Labor and Industrial Relations. Oversight used the Department of Labor's numbers of \$3,252,084 in Second Injury Funding for personnel, fringe benefits, leasing and expense money. **Oversight** for the purpose of this fiscal note has shown the transfer out of funding from the Office of the Attorney General to the Department of Labor and Industrial Relations with the net effect on the Second Injury Fund as zero.

<u>FISCAL IMPACT - State Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
GENERAL REVENUE			
<u>Savings</u> - CARO			
Second Injury Fund payouts	<u>\$235,925</u>	<u>\$235,925</u>	<u>\$235,925</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>\$235,925</u>	<u>\$235,925</u>	<u>\$235,925</u>
WORKERS COMPENSATION ADMINISTRATION FUND			
<u>Cost- Labor Commission</u>			
Personal Services	\$0	(\$50,000)	(\$50,000)
Fringe Benefits	<u>\$0</u>	<u>(\$22,110)</u>	<u>(\$22,110)</u>
<u>Total Costs</u> - Labor Commission	<u>\$0</u>	<u>(\$72,110)</u>	<u>(\$72,110)</u>
FTE Change - Labor Commission	0 FTE	1 FTE	1 FTE
ESTIMATED NET EFFECT ON WORKERS COMPENSATION ADMINISTRATION FUND	<u>\$0</u>	<u>(\$72,110)</u>	<u>(\$72,110)</u>
Estimated Net FTE Change on Workers Compensation Administration Fund	0 FTE	1 FTE	1 FTE

SECOND INJURY FUND

<u>Transfer Out-</u> Attorney General Office attorneys & expenses	(\$3,252,084)	(\$3,252,084)	(\$3,252,084)
<u>Transfer In-</u> Dept. of Labor attorneys & expenses	\$3,252,084	\$3,252,084	\$3,252,084
<u>Cost-</u> Dept. of Labor Annual actuarial study	(\$25,000)	(\$25,000)	(\$25,000)
<u>Savings-</u> Dept. of Labor Second Injury Fund pay-outs	<u>Unknown</u> <u>greater than</u> <u>\$100,000</u>	<u>Unknown</u> <u>greater than</u> <u>\$100,000</u>	<u>Unknown</u> <u>greater than</u> <u>\$100,000</u>

ESTIMATED NET EFFECT ON SECOND INJURY FUND

<u>Unknown</u> <u>greater than</u> <u>\$100,000 to</u> <u>(\$25,000)</u>	<u>Unknown</u> <u>greater than</u> <u>\$100,000 to</u> <u>(\$25,000)</u>	<u>Unknown</u> <u>greater than</u> <u>\$100,000 to</u> <u>(\$25,000)</u>
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ROAD FUND

<u>Savings -</u> MoDOT Second Injury Fund pay-outs	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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ESTIMATED NET EFFECT ON ROAD FUND

<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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CONSERVATION FUND

<u>Savings -</u> Department of Conservation Second Injury Fund pay-outs	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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ESTIMATED NET EFFECT ON CONSERVATION FUND

<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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<u>FISCAL IMPACT - Local Government</u>	<u>FY 2009</u> <u>(10 Mo.)</u>	<u>FY 2010</u>	<u>FY 2011</u>
	<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 Committee on Legislative Research shall form a committee to present quarterly reports on the Second Injury Fund.

Beginning August 28, 2008, no claim for permanent partial disability shall be made against the Second Injury Fund.

All rights to compensation for permanent total disability shall cease upon the death of the injured employee. Only accrued benefits for permanent total disability will be paid to dependents upon their death.

Permanent total disability payments shall cease when the employee is able to compete for employment in the open labor market or returns to work. The Labor and Industrial Relations Commission shall retain jurisdiction in the case during the lifetime of an employee who has received an award for permanent total disability.

The Second Injury Fund is renamed the Veterans and Permanent Total Disability Fund.

Currently, the Treasurer with advice and consent of the Attorney General may enter into settlement agreements for claims against the Second Injury Fund. This act replaces the role of the Treasurer with the Department of Labor and Industrial Relations or its director's designee. Compromise settlements shall not be greater than \$20,000. Staff attorneys of the Department of Labor and Industrial Relations shall defend the fund. In defending the fund the Treasurer may dispute the reasonableness of the medical fees based upon an audit of the medical bills. Actuarial studies of the fund shall be conducted yearly instead of every 3 years.

FISCAL DESCRIPTION (continued)

After August 28, 2008, claims against the fund shall only be compensable when the employee has a medically documented preexisting disability as a direct result of military duty or as a result of a preexisting permanent partial disability from a compensable injury that equals a minimum of 50 weeks of compensation, or if a major extremity injury only, equals a minimum of 15% permanent partial disability and then sustains a subsequent work-related injury that, in combination results in permanent total disability. The employer is liable only for the disability resulting from the subsequent work-related injury in and of itself unless the compensation for which the employer is liable at the time of the subsequent injury is less than the compensation for permanent total disability. In such a case the employee shall be paid the initial liability plus the remainder that would be due for permanent total disability out of the Second Injury Fund.

Persons receiving payments from the fund shall annually submit proof of eligibility to continue to receive payments supported by the treating physician. The fund shall continue to cover injuries of employees employed by uninsured employers. Lump sum settlements paid out of the fund shall not be awarded in an amount greater than \$10,000 in a 12 month period until the fund becomes solvent.

Claimants shall not receive compensation for injuries in which the aggregate total of disability exceeds 100%.

Attorney's fees shall not exceed 15% of any award or settlement paid out of the fund.

Employer's may provide an irrevocable letter of credit from a bank as security to self-insure.

The Department of Insurance, Financial Institutions and Professional Registration may audit companies insured in multiple states to determine the amount of insurance premium applicable to Missouri workers and the surcharge required for the Second Injury Fund.

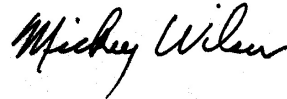
The Workers' Compensation Fund tax shall not be less than 1% and no more than 2% in any year after January 1, 2009.

Advances from the Workers' Compensation Fund to the Second Injury Fund shall be made with the advice of the chairs of the Senate and House appropriations committees. Advances shall be repaid within 5 years.

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
Department of Labor and Industrial Relations
Office of Administration
Missouri Department of Transportation
Department of Insurance, Financial Institutions and Professional Registration
Legislative Research
Office of the Governor
Missouri Senate
Office of the State Auditor
Department of Conservation

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
April 27, 2008