

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4684-01
Bill No.: SB 1164
Subject: Employees - Employers; Workers' Compensation
Type: Original
Date: March 3, 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

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

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 9 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	0	0	0

- 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 this legislation abrogates a Supreme Court decision regarding the Second Injury Fund. 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 Second Injury Fund (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.

For Permanent Total Disability (PTD) benefits, the bill requires termination of PTD benefits when the claimant becomes eligible for full Social Security retirement benefits. If the claimant is receiving Social Security retirement benefits when PTD is awarded then the PTD is paid for two years with a 50% offset. If the claimant receiving PTD benefits becomes able to compete in the labor market for employment or returns to work, the PTD benefits are terminated. The Department believes that this change will create a savings for the SIF. In 2007 the PTD benefits paid to persons who had reached the age of 60 in 2007 was \$15,253,523.00. If the age of eligibility for purposes of the bill is 65 or older, then termination of PTD at that point will create a significant savings for the SIF.

Currently, a person may use the same prior disability to make a Permanent Partial Disability claim multiple times against the SIF. The bill allows the use of a prior disability only once in calculating a Second Injury Fund Permanent Partial Disability award. However, the prior disability, if used for a PPD determination can also be used for a PTD determination. For all claims filed against the SIF up to July 27, 2007, there were 45,097 cases where a claimant filed multiple claims against the Fund. Of these there were 17,177 cases where the person filed three or more claims against the fund. The Department is unable to determine how many of those claim filings used the same prior disability to claim for benefits. However, if a percentage of those filings included the use of the same prior disability, then a prohibition of using the same prior disability more than once will create a savings for the Fund. The savings at this time would be unknown.

The bill prohibits the award of SIF benefits if another state has jurisdiction over the work-related injury. The Department is unable at this time to determine how many SIF claims are made when another state has jurisdiction over the work-related injury. However, the Department believes

ASSUMPTION (continued)

this provision could create some savings for the SIF.

The bill also deletes the requirement in section 287.715 that any advance of funds from the workers' compensation administrative fund to the second injury fund be paid back. With the deletion of the language requiring payback of any advance from the workers' compensation administrative fund to the SIF, there is no requirement in the law that any advance be paid back to the workers' compensation administrative fund for the SIF. If there is no pay back requirement, then it is assumed that multiple advances to the SIF could have a significant cost impact on the workers' compensation administrative fund. The extent of any costs impact would depend upon how much is advanced. Therefore the cost impact at this time is unknown.

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)** assumes that the various provisions of this proposal will create a potential cost savings in the long term. However, the AGO assumes that verifying each Permanent Partial Disability (PPD) claimant has no previous awards on a particular body part (Section 287.220.1) will be labor intensive and time consuming. The additional duties imposed by this proposal may require the AGO to ask for further funding. For the review of files to determine prior disabilities, the AGO assumes costs are unknown but under \$100,000.

Officials at the **Department of Conservation** assume this proposed legislation could have a potential positive fiscal impact on MDC funds, since it provides for the termination of permanent total disability payments when the employee is eligible to receive full Social Security retirement benefits under the Social Security Act or other retirement benefits in lieu of Social Security retirement benefits. The exact amount of impact is unknown.

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

<u>FISCAL IMPACT - State Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
GENERAL REVENUE			
<u>Savings - CARO</u>			
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>Transfer Out- DOLIR</u>			
Advance of Funds to the Second Injury Fund	<u>(Unknown over \$100,000)</u>	<u>(Unknown over \$100,000)</u>	<u>(Unknown over \$100,000)</u>
ESTIMATED NET EFFECT ON WORKERS COMPENSATION ADMINISTRATION FUND	<u>(Unknown over \$100,000)</u>	<u>(Unknown over \$100,000)</u>	<u>(Unknown over \$100,000)</u>
SECOND INJURY FUND			
<u>Cost - Attorney General Office review of injuries</u>			
	(Unknown under \$100,000)	(Unknown under \$100,000)	(Unknown under \$100,000)
<u>Savings - Second Injury Fund</u>			
Savings in pay-outs	Unknown over \$100,000	Unknown over \$100,000	Unknown over \$100,000
<u>Transfer In - Second Injury Fund</u>			
Advance of Funds from Workers Compensation Administration Fund	<u>Unknown over \$100,000</u>	<u>Unknown over \$100,000</u>	<u>Unknown over \$100,000</u>
ESTIMATED NET EFFECT ON SECOND INJURY FUND	<u>Unknown over \$100,000</u>	<u>Unknown over \$100,000</u>	<u>Unknown over \$100,000</u>

ROAD FUND

Savings - 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

Savings - 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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FISCAL IMPACT - Local Government

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

This proposal may result in a cost savings to businesses.

FISCAL DESCRIPTION

Under the act, all rights to unaccrued compensation for permanent total disability shall cease upon the death of the injured employee. Unpaid unaccrued compensation for permanent partial disability will continue to be paid to dependents.

Rights to receive permanent total disability shall terminate when the employee is eligible to receive full Social Security retirement benefits or other retirement benefits. If the employee begins receiving such benefits before the compensable injury occurs, the employee may receive permanent total disability for two years offset by 50% of the weekly retirement benefit.

FISCAL DESCRIPTION (continued)

Currently, when an injured employee receives permanent total disability and is returned to his or her regular work or equivalent, payments are suspended during the time the employee is able to work. This act requires such compensation to terminate at the time the employee is able to compete for employment in the open labor market or returns to work.

Disabilities previously used in calculating an earlier award or settlement of a second injury fund claim for permanent partial disability shall not be used in later claims of the same type. However, such previous disabilities may be used in a claim against the fund for permanent total disability.

Compensation for permanent partial disability shall not be paid from the second injury fund when another state has jurisdiction over the injury. Similarly, when an employer fails to insure or self-insure, the second injury fund shall not cover any costs when another state has jurisdiction over the injury.

Under current law, claims against the second injury fund shall be filed within 2 years after the date of the injury or within 1 year after the claim is filed against the employer or insurer, whichever is later. Under the act, such claims must be filed within 2 years after the date the original claim is filed against the employer. Claim for medical fees or expenses must be filed within 2 years of the last date of medical treatment or service.

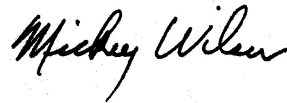
The act removes a provision requiring any advances from the workers' compensation fund to the second injury fund to be reimbursed within one year.

This act contains an emergency clause.

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
Department of Conservation
Office of Administration
Missouri Department of Transportation
Office of the State Treasurer
Department of Insurance, Financial Institutions and Professional Registration
Office of the Attorney General



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Director
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