

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1323-01  
Bill No.: SB 290  
Subject: Workers' Compensation  
Type: Original  
Date: January 30, 2017

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Bill Summary: This proposal modifies provisions relating to workers' compensation.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Legal Expense Fund	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0 to Unknown</b>	<b>\$0 to Unknown</b>	<b>\$0 to Unknown</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 10 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
<b>Local Government</b>	<b>\$0 to Unknown</b>	<b>\$0 to Unknown</b>	<b>\$0 to Unknown</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Department of Labor and Industrial Relations** assume this proposal would not have a fiscal impact on their organization.

Officials at the **Office of Administration - General Services (OA-GS)** assume this proposal would not have a fiscal impact to their organization because it is assumed that no successful claims will be made against the Legal Expense Fund, OA-GS provides the following explanation.

§287.120.6(4) – This provision creates a rebuttal presumption that a workers' compensation injury was sustained in conjunction with the use of a tested non-controlled drug when a positive test by specified methods is confirmed within forty-eight hours. Under subsection (1) compensation and death benefits shall be reduced fifty percent if the injury was sustained in conjunction with the use of alcohol or non-prescribed controlled drugs. Therefore, this provision of the statute could lead to cost savings. The amount of such savings, if any, cannot be estimated as it would depend on the facts and circumstances of each particular case.

§287.140.8 – No impact.

§287.150.7 – No impact.

§287.170.5 – This provision denies the employee temporary total or temporary partial disability benefits when the employee voluntarily separates from employment when the employer had work available that was in compliance with any medical restriction imposed as a result of the injury that was the subject of the claim. This provision of the statute could lead to cost savings in temporary benefits. The amount of such savings, if any, cannot be estimated as it would depend on the facts and circumstances of each particular case.

§287.780 – This section appears to create a stricter legal burden for proving retaliatory discharge or discrimination. This could potentially result in a reduction in the amount of claims successfully made against the State Legal Expense Fund based on retaliatory discharge or discrimination.

OA-GS understands, and therefore assumes, that the legal standard in 287.780 creates a somewhat higher burden on plaintiffs seeking damages for retaliatory discharge or discrimination. This higher burden may result in either fewer claims for damages being made against state agencies or employees, or in more successful legal defense against such claims, either of which could result in potential savings to the Legal Expense Fund.

ASSUMPTION (continued)

However, the amount of the potential savings resulting from this proposal cannot be reasonably estimated as this language creates a new legal standard, subject to judicial interpretation, and there is no readily available information that could assist in forming a rational basis for estimating savings. In addition, the number of potential claims, the severity of those claims, and the ultimate costs associated with any settlement or judgment resulting from those claims cannot be forecasted with any degree of assurance to their accuracy.

Office of Administration—General Services assumes that no state employee would violate the proposal. Therefore, it is assumed that no successful claims will be made against the Legal Expense Fund and the proposal would thus have no fiscal impact upon the Office of Administration—General Services. However, should that assumption prove to be incorrect, significant costs could be incurred by the Legal Expense Fund.

**Oversight** will show a potential savings to the Legal Expense Fund of \$0 to Unknown based on the response from OA-GS.

Officials at the **Office of Administration - Budget and Planning** defer to Office of Administration - General Services and Department of Labor and Industrial Relations for any specific statewide impact.

Officials at the **Department of Elementary and Secondary Education** defer to another agency which has access to the cumulative data required to provide the statewide fiscal impact that will result 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.

ASSUMPTION (continued)

Officials at the **Department of Agriculture, Office of Administration - Administrative Hearing Commission, Missouri Ethics Commission, Department of Public Safety - Gaming Commission, Department of Health and Senior Services, Department of Health and Senior Services, Missouri House of Representatives, Department of Insurance, Financial Institutions and Professional Registration, Department of Natural Resources, Joint Committee on Administrative Rules, Joint Committee on Public Employee Retirement, Lieutenant Governor, Missouri Lottery Commission, Department of Mental Health, Missouri Consolidated Health Care Plan, Missouri State Employees' Retirement System, State Highway Employees Retirement System, Office of State Courts Administrator, Department of Social Services, Office of Prosecution Services, State Public Defender's Office, Missouri Tax Commission, Department of Public Safety - Alcohol and Tobacco, Department of Public Safety - Capitol Police, Department of Public Safety - Fire Safety Division, Department of Public Safety - State Emergency Management Agency, Department of Public Safety - Missouri Veterans Commission, and Department of Public Safety - Highway Patrol** each assume this proposal will not have a fiscal impact on their respective organizations.

Officials at the **City of Kansas City** assume this proposal will have a positive fiscal impact to their organization which is an undeterminable amount.

Officials at **Boone County** assume this proposal would have a negative fiscal impact on their organization due to the requirement that a drug test must be performed after all work related injuries. On average, this should result in an additional burden of about \$1,000. Also, the final piece of this proposal creates a much higher burden of proof for plaintiffs in retaliation claims that could result in lower premiums on our liability insurance.

**Oversight** will show an unknown fiscal impact to local political subdivisions as an unknown negative cost for drug testing and a unknown savings for premiums on liability insurance.

Officials at the **Callaway County** assume this proposal would not have a fiscal impact on their organization.

Officials at the **Missouri State University, Missouri Western State University, Northwest Missouri State University, State Technical College of Missouri, and University of Missouri** each assume this proposal will not have a fiscal impact on their respective organizations.

Officials at the school district of **Forsyth R-III** assume this proposal will have a negative fiscal impact to their organization.

ASSUMPTION (continued)

Officials at the school districts of **Kansas City**, **Kirksville R-III**, and **West Plains R-VII** each assume this proposal will not have a fiscal impact on their respective organizations.

Officials at the following cities: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Columbia, Dardenne Prairie, Des Peres, Excelsior Springs, Florissant, Frontenac, Fulton, Gladstone, Grandview, Harrisonville, Independence, Jefferson City, Joplin, Kearney, Knob Noster, Ladue, Lake Ozark, Lee Summit, Liberty, Louisiana, Maryland Heights, Maryville, Mexico, Monett, Neosho, O'Fallon, Pacific, Peculiar, Pineville, Popular Bluff, Raytown, Republic, Richmond, Rolla, Sedalia, Springfield, St. Charles, St. Joseph, St. Louis, St. Robert, Sugar Creek, Sullivan, Warrensburg, Warrenton, Webb City, Weldon Spring and West Plains did not respond to **Oversight's** request for fiscal impact.

Officials at the following counties: Andrew, Atchison, Audrain, Barry, Bollinger, Buchanan, Camden, Cape Girardeau, Carroll, Cass, Christian, Clay, Cole, Cooper, DeKalb, Dent, Franklin, Greene, Holt, Jackson, Jefferson, Johnson, Knox, Laclede, Lawrence, Lincoln, Maries, Marion, McDonald, Miller, Mississippi, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Perry, Pettis, Phelps, Platte, Pulaski, Scott, Shelby, St. Charles, St. Louis, St. Francois, Taney, Warren, Wayne and Worth did not respond to **Oversight's** request for fiscal impact.

Officials at the following colleges: Crowder, East Central Community College, Harris-Stowe, Jefferson College, Lincoln University, Metropolitan Community College, Moberly Area Community College, Missouri Southern State University, Southeast Missouri State University, State Fair Community College, St. Charles Community College, St. Louis Community College, Three Rivers Community College, Truman State University, and the University of Central Missouri did not respond to **Oversight's** request for fiscal impact.

Officials at the following school districts: Arcadia Valley R-2, Aurora R-8, Avilla R-13, Bakersfield, Belton, Benton County R-2, Bismark R-5, Bloomfield R-14, Blue Springs, Bolivar R-I, Bowling Green R-1, Branson, Brentwood, Bronaugh R-7, Campbell R-2, Carrollton R-7, Caruthersville, Cassville R-4, Central R-III, Chilhowee R-4, Chillicothe R-II, Clarkton C-4, Cole R-I, Columbia, Concordia R-2, Crawford County R-1, Crocker R-II, Delta C-7, East Carter R-2, East Newton R-6, Eldon R-I, Everton R-III, Fair Grove, Fair Play, Fayette R-3, Fox C-6, Fredericktown R-I, Fulton, Grain Valley, Hancock Place, Hannibal, Harrisonburg R-8, Harrisonville, Hillsboro R-3, Hollister R-5, Humansville R-4, Hurley R-1, Independence, Jefferson City, Kearney R-1, Kennett #39, King City R-1, Kingston 42, Kirbyville R-VI, Laclede County R-1, Laredo R-7, Lee Summit, Leeton R-10, Lewis County C-1, Lindbergh, Lonedell R-14, Macon County R-1, Macon County R-4, Malta Bend, Mehville, Mexico, Middle Grove C-1, Midway R-1, Milan C-2, Moberly, Monroe City R-I, Morgan County R-2, New Haven, Nixa, North St. Francois Co. R-1, Northeast Nodaway R-5, Odessa R-VII, Oregon-Howell R-III, Orrick

ASSUMPTION (continued)

R-11, Osage County R-II, Osborn R-O, Parkway, Pattonville, Pettis County R-12, Pierce City, Plato R-5, Princeton R-5, Raymore-Peculiar R-III, Raytown, Reeds Springs R-IV, Renick R-5, Richland R-1, Riverview Gardens, Salisbury R-4, Sarcoxie R-2, Scotland County R-I, Sedalia, Seymour R-2, Shelby County R-4, Shell Knob #78, Sikeston, Silex, Slater, Smithville R-2, Special School District of St. Louis County, Spickard R-II, Springfield, St Joseph, St Louis, St. Charles, St. Elizabeth R-4, Sullivan, Tipton R-6, Valley R-6, Verona R-7, Warren County R-3, Warrensburg R-6, Webster Groves, West Plains R-VII, Westview C-6 and the Wright City R-2 School District did not respond to **Oversight's** request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
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**LEGAL EXPENSE FUND**

<u>Savings - Reduction in Claims</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
Total Savings	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>

<b>ESTIMATED NET EFFECT ON LEGAL EXPENSE FUND</b>	<b><u>\$0 to Unknown</u></b>	<b><u>\$0 to Unknown</u></b>	<b><u>\$0 to Unknown</u></b>
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<u>FISCAL IMPACT - Local Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
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**LOCAL POLITICAL SUBDIVISIONS**

<u>Savings - Reduction of Insurance Liability Premiums and Smaller Claims</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
Total Savings	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>

<b>ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS</b>	<b><u>\$0 to Unknown</u></b>	<b><u>\$0 to Unknown</u></b>	<b><u>\$0 to Unknown</u></b>
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FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This act makes changes to workers' compensation laws.

REDUCTION OF WORKERS' COMPENSATION AWARD BASED ON USE OF DRUGS  
 (SECTION 287.120)

FISCAL DESCRIPTION (continued)

Under current law, if an employee fails to obey any rule or policy of an employer relating to the use of alcohol or nonprescribed drugs in the workplace, the compensation or death benefit available under workers' compensation laws shall be reduced by 50% if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled drugs.

This act provides that any positive test taken within 48 hours of an injury for a nonprescribed controlled drug from an employee shall give rise to a rebuttable presumption that the tested nonprescribed controlled drug was in the employee's system and that the injury was sustained in conjunction with the use of the drug.

FEES AND CHARGES UNDER WORKERS' COMPENSATION LAWS

(SECTION 287.140)

Under current law, all fees and charges which are authorized under workers' compensation laws shall be fair and reasonable. This act changes that to a standard of usual and customary.

REACTIVATION OF CLAIMS FOLLOWING SETTLEMENT (SECTION 287.140)

Under current law, a claim for compensation may be reactivated following the completion of settlement of such claim. Under this act, reactivation may not be made if the employee has explicitly agreed that such a claim cannot be reactivated.

SUBROGATION OF EMPLOYER RIGHTS (SECTION 287.150)

Under current law, employers do not have subrogation rights in toxic exposure cases when a third person is liable to the employee. This act repeals that provision.

TERMINATION OF DISABILITY PAYMENTS (SECTION 287.170)

If an employee voluntarily separates from employment at a time when the employer made work available for the employee which was in compliance with any medical restriction imposed upon the employee as a result of an injury that is the subject of a claim for benefits under workers' compensation, neither temporary total disability nor temporary partial disability benefits shall be payable to the employee.

DISCHARGE AND DISCRIMINATION (SECTION 287.780)

Under current law, an employer shall not discriminate or discharge an employee for exercising their rights under workers' compensation laws. This act requires that an employee must show that the filing of a claim for workers' compensation benefits was the exclusive cause of discrimination or discharge from employment.



FISCAL 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

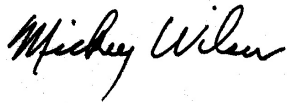
Department of Labor and Industrial Relations  
Office of Administration - General Services  
Office of Administration - Budget and Planning  
Department of Elementary and Secondary Education  
Office of Secretary of State  
Department of Agriculture  
Office of Administration - Administrative Hearing Commission  
Missouri Ethics Commission  
Department of Public Safety - Gaming Commission  
Department of Health and Senior Services, Department of Health and Senior Services  
Missouri House of Representatives  
Department of Insurance, Financial Institutions and Professional Registration  
Department of Natural Resources  
Joint Committee on Administrative Rules  
Joint Committee on Public Employee Retirement  
Lieutenant Governor  
Missouri Lottery Commission  
Department of Mental Health  
Missouri Consolidated Health Care Plan  
Missouri State Employees' Retirement System  
State Highway Employees Retirement System  
Office of State Courts Administrator  
Department of Social Services  
Office of Prosecution Services  
State Public Defender's Office  
Missouri Tax Commission  
Department of Public Safety - Alcohol and Tobacco  
Department of Public Safety - Capitol Police  
Department of Public Safety - Fire Safety Division  
Department of Public Safety - State Emergency Management Agency  
Department of Public Safety - Missouri Veterans Commission  
Department of Public Safety - Highway Patrol  
City of Kansas City  
Boone County  
Callaway County

SOURCES OF INFORMATION (continued)

Missouri State University  
Missouri Western State University  
Northwest Missouri State University  
State Technical College of Missouri  
University of Missouri

School Districts of:

Forsyth R-III  
Kansas City  
Kirksville R-III  
West Plains R-VII



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