

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1323-04
Bill No.: SCS for SB 290
Subject: Workers' Compensation
Type: Original
Date: February 17, 2017

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

FISCAL SUMMARY

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

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

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 11 pages.

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

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

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

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

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.

§287.170.5 – 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. 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

ASSUMPTION (continued)

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 Revenue** defer to Office of Administration for fiscal impact.

Officials at the **Department of Public Safety - Missouri Veterans Commission** defer to Office of Administration - Central Accident Reporting Office for a fiscal impact.

Officials at the **Office of Administration - Personnel** assume this proposal would not have a fiscal impact on their organization.

Officials at the **Department of Economic Development** defer to Office of Administration - Personnel for fiscal 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 at the **Attorney General's Office (AGO)** assume that any potential costs arising from this proposal can be absorbed with existing resources. AGO may seek additional appropriations if the proposal results in a significant increase in litigation.

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

ASSUMPTION (continued)

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.

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

In response to a previous version of this proposal (1323-01), officials at the **Department of Conservation** assumed the proposal could have a potentially positive fiscal impact estimated at less than \$100,000 annually.

In response to a previous version of this proposal (1323-01), officials at the **Department of Transportation** assumed the proposal could have a minimal impact to their organization but does not see such cases often.

ASSUMPTION (continued)

In response to a previous version of this proposal, officials at the **Department of Natural Resources**, the **Missouri State Employees' Retirement System**, and the **Department of Public Safety - State Emergency Management Agency** each assumed the proposal would not have a fiscal impact on their respective organizations.

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

In response to a previous version of this proposal (1323-01), officials at the **City of Kansas City** assume this proposal will have a positive fiscal impact to their organization which is an undeterminable amount.

In response to a previous version of this proposal (1323-01), officials at **Boone County** assumed the 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.

In response to a previous version of this proposal (1323-01), officials at the **Callaway County** assumed the proposal would not have a fiscal impact on their organization.

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

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

In response to a previous version of this proposal (1323-01), officials at the school district of **Forsyth R-III** assumed the proposal would have a negative fiscal impact to their organization.

ASSUMPTION (continued)

In response to a previous version of this proposal (1323-01), officials at the school district of **Kansas City** assumed the proposal would not have a fiscal impact on their organization.

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 R-11, Osage County R-II, Osborn R-O, Parkway, Pattonville, Pettis County R-12, Pierce City,

ASSUMPTION (continued)

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>

ESTIMATED NET EFFECT ON LEGAL EXPENSE FUND	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
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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>

ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
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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.

FISCAL DESCRIPTION (continued)

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

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.

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

FISCAL DESCRIPTION (continued)

the filing of a claim for workers' compensation benefits was the exclusive cause of discrimination or discharge from employment.

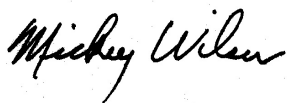
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Office of Administration - General Services
Office of Administration - Budget and Planning
Office of Administration - Personnel
Department of Revenue
Department of Economic Development
Attorney General's Office
Department of Elementary and Secondary Education
Office of Secretary of State
Department of Agriculture
Office of Administration - Administrative Hearing Commission
State Auditor's Office
Department of Corrections
Department of Conservation
Missouri Ethics Commission
Department of Public Safety - Gaming Commission
Governor's Office
Lieutenant Governor's Office
Department of Health and Senior Services, Department of Health and Senior Services
Department of Higher Education
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
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

SOURCES OF INFORMATION (continued)

Department of Social Services
Office of Prosecution Services
State Public Defender's Office
Missouri Tax Commission
State Treasurer's Office
Department of Transportation
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
St. Louis County
Missouri State University
Missouri Western State University
Northwest Missouri State University
State Technical College of Missouri
University of Central Missouri
University of Missouri
School Districts of:
 Forsyth R-III
 Kansas City
 Kirksville R-III
 West Plains R-VII



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Director
February 17, 2017

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Assistant Director
February 17, 2017