

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3061-01
Bill No.: SB 591
Subject: Civil Procedure; Health Care Professionals; Liability; Medical Procedures and Personnel
Type: Original
Date: January 14, 2020

Bill Summary: This proposal modifies provisions relating to punitive damages.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue (appropriation reduction to LEF for cost avoidance)	\$0 to May exceed \$2,384,583	\$0 to May exceed \$2,861,500	\$0 to May exceed \$2,861,500
Total Estimated Net Effect on General Revenue	\$0 to May exceed \$2,384,583	\$0 to May exceed \$2,861,500	\$0 to May exceed \$2,861,500

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Legal Expense Fund*	\$0	\$0	\$0
Tort Victims Compensation Fund	\$0 to May exceed (\$3,036,830)	\$0 to May exceed (\$3,644,197)	\$0 to May exceed (\$3,644,197)
Total Estimated Net Effect on Other State Funds	\$0 to May exceed (\$3,036,830)	\$0 to May exceed (\$3,644,197)	\$0 to May exceed (\$3,644,197)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

* Indicates numbers that net to zero.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
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 2021	FY 2022	FY 2023
Local Government	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown

FISCAL ANALYSIS

ASSUMPTION

The **Department of Commerce and Insurance, Department of Corrections, Department of Health and Senior Services, Department of Revenue, Department of Social Services, State Courts Administrator, State Prosecution Services, and State Public Defender** each assume this proposal would have no direct fiscal impact on their respective agencies. Because Oversight has no conflicting information, this fiscal note shows no direct fiscal impact for these agencies.

The **Office of the Attorney General (AGO)** said that although they could absorb any additional litigation costs, this proposal would have an unknown negative direct fiscal impact on the Tort Victims Compensation Fund. In response to a similar proposal from a previous year, the AGO assumed a net positive direct fiscal impact to the Legal Expense Fund (LEF). The AGO stated “that if this legislation becomes law, it will be more difficult for plaintiffs to receive punitive damages[.]”

Tort Victims Compensation Fund - \$0 to may exceed (\$3,644,196.94)

The Department of Labor Website says “The Tort Victims’ Compensation Fund exists to help compensate those who have been injured due to the negligence or recklessness of another (such as in a motor vehicle collision or a hunting accident), and who have been unable to obtain full compensation because the party at fault (the tortfeasor) had no insurance, or inadequate insurance, or has filed for bankruptcy, or for other reasons specified by the law.”

Oversight notes that under §537.675.3, 50% of the punitive damage state judgments, after deducting attorney’s fees and expenses, shall go into the Tort Victims’ Compensation Fund (0622). Because this proposal tends to reduce punitive damages awards, it appears to have a negative direct fiscal impact to the tort victims’ compensation fund.

Information provided by the Attorney General shows that between July, 2014, and December, 2019, the Tort Victims Compensation Fund received \$20,043,083. During that period, average annual payments into the Tort Victims Compensation Fund were \$3,644,197.

Oversight will show an annual direct fiscal impact of \$0 to May exceed (\$3,644,197) to the tort victims compensation fund.

A fiscal note for similar previous proposal SB65 (2019) had incorrectly shown a negative annual direct fiscal impact of \$0 to may exceed \$1,430,750, but that amount did not include amounts paid into the Tort Victims Compensation Fund by private parties. It only included amounts paid from the LEF.

ASSUMPTION (continued)

Legal Expense Fund (LEF) - \$0 to may exceed \$2,861,500

“The State Legal Expense Fund (LEF) is used for payments in resolution of judgments or claims for damages from injured parties arising out of the actions of state employees, agencies, contracted physicians, and the condition of state property.” *Audit Report No. 2017-098*

Oversight notes the Legal Expense Fund pays punitive damages to plaintiffs in State and Federal Court.

State and Federal punitive damages paid by LEF in last five years			
Date Paid	Punitive Damages	Case	Claim(s)
4/13/2015	\$3,000,000	<i>Lee v. Albert Lee Borders</i> , No 4:09-cv-1977-TIA (E.D. Missouri)	42 U.S.C. §1983
6/24/2015	\$60,000	<i>Kudlinski v. Missouri Dep’t of Corrections</i> , No. 11SL-CC04793 (St. Louis County Circuit Court)	MHRA (Missouri Human Rights Act)
3/23/2016	\$1,250,000	<i>Fuchs v. Missouri Department of Revenue</i> , No. 11AC-CC00486-01 (Cole County Circuit Court)	MHRA
7/31/82017	\$3,500,000	<i>Beverly Wilkins v. Board of Regents of Harris-Stowe State University</i> , No ED104354 (St. Louis County Circuit Court)	MHRA
8/11/2017	\$55,000	<i>Letterman v. William Burgess, et al.</i> , No 5:12-cv-06136-NKL (W.D. Missouri).	42 U.S.C. §1983
12/11/2017	\$5,000	<i>Thompson v. Kyle Webb, et al.</i> , No 4:14-cv-1987-JCH (E.D. Missouri).	42 U.S.C. §1983
2/22/2018	\$1,000,000	<i>Hesse v. Missouri Department of Corrections</i> , No. 1416-CV07836 (Jackson County Circuit Court)	MHRA
3/8/2018	\$1,575,000	<i>Kerr v. Missouri Veterans Commission</i> , No. 11AC-CC00436 (Cole County Circuit Court)	MHRA
6/14/2018	\$1,000	<i>Ernest Williams v. Don Roper, et al.</i> , No. 4:13-cv-02440 (E.D. Missouri).	42 U.S.C. §1983
10/3/2018	\$1,000,000	<i>Mignone v. Department of Corrections</i> , No. 12DK-CC00152 (DeKalb County Circuit Court).	MHRA

Oversight assumes that other state agencies may see reduced punitive damage costs from this proposal. Between April, 2015, and October, 2018, the LEF paid out \$11,446,000 - averaging \$2,861,500 annually. Future punitive damage award may be affected by this proposal. Therefore, Oversight will range the amount of direct fiscal impact to various state agencies between \$0 to May exceed \$2,861,500 each year in reduced LEF (through General Revenue) appropriations.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
GENERAL REVENUE			
<u>Savings</u> - potential reduction on pay outs of punitive damages from LEF	\$0 to May exceed <u>\$2,384,583</u>	\$0 to May exceed <u>\$2,861,500</u>	\$0 to May exceed <u>\$2,861,500</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	\$0 to May exceed <u>\$2,384,583</u>	\$0 to May exceed <u>\$2,861,500</u>	\$0 to May exceed <u>\$2,861,500</u>
LEGAL EXPENSE FUND			
<u>Cost Avoidance</u> - potential reduction on pay outs of punitive damages from LEF	\$0 to May exceed <u>\$2,384,583</u>	\$0 to May exceed <u>\$2,861,500</u>	\$0 to May exceed <u>\$2,861,500</u>
<u>Transfer in</u> - Reduction in appropriation from GR	(\$0 to May exceed <u>\$2,384,583</u>)	(\$0 to May exceed <u>\$2,861,500</u>)	(\$0 to May exceed <u>\$2,861,500</u>)
ESTIMATED NET EFFECT ON LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
TORT VICTIMS COMPENSATION FUND			
<u>Loss</u> - Various State Agencies - potential reduction from pay outs of punitive damages to TVCF	\$0 to may exceed <u>(\$3,036,830)</u>	\$0 to may exceed <u>(\$3,644,197)</u>	\$0 to may exceed <u>(\$3,644,197)</u>
ESTIMATED NET EFFECT ON TORT VICTIMS' COMPENSATION FUND	<u>(\$3,036,830)</u>	<u>(\$3,644,197)</u>	<u>(\$3,644,197)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
LOCAL POLITICAL SUBDIVISIONS			
Savings - Potentially less punitive damages to pay out	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

PUNITIVE DAMAGES - GENERAL (510.259, 510.263, 510.265)

The act provides that punitive damages shall only be awarded if the plaintiff proves by clear and convincing evidence that the defendant intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others, and the plaintiff is awarded more than nominal damages or the claims invoke privacy, property or constitutional rights.

Punitive damages may only be awarded against an employer due to an employee's conduct in certain situations, as provided in the act.

A claim for punitive damages shall not be contained in the initial pleading and may only be filed as a written motion with permission of the court no later than 120 days prior to the final pretrial conference or trial date. The written motion for punitive damages must be supported by evidence. A pleading seeking a punitive damages award may be filed only after the court determines that the trier of fact could reasonably conclude that the standards, as provided in the act, for punitive damages have been met.

Currently, in jury trials involving a claim for punitive damages there is a bifurcated trial. In the first stage, the jury determines liability and amount for compensatory damages and the liability for punitive damages, and the amount of punitive damages is determined in the second stage. This act provides that after an award of compensatory damages has been made in the first stage, then the court shall determine whether punitive damages may be considered by the jury. After the court's determination, the jury will determine whether to award punitive damages and the amount.

FISCAL DESCRIPTION (continued)

Currently, if a defendant has previously paid punitive damages in another state for the same conduct, following a hearing the court may credit the jury award of punitive damages by the amount previously paid. This act provides that the defendant may be credited for punitive damages also paid in federal court.

This proposal also requires parties asserting punitive damages claims to pay opposing parties' attorney fees, if the punitive damage claims are unsuccessful.

These provisions do not apply to claims for unlawful housing practices under the Missouri Human Rights Act.

PUNITIVE DAMAGES - MEDICAL MALPRACTICE (538.205, 538.210)

The act modifies the definition of "punitive damages" as it is used in sections of law relating to actions for damages against a health care provider for personal injury or death caused by the rendering of health care services.

In order to be awarded punitive damages, the jury must find by clear and convincing evidence that the health care provider intentionally caused damage or demonstrated malicious misconduct.

Evidence of negligence, including indifference or conscious disregard for the safety of others, does not constitute a basis for a punitive damage award.

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

The proposed legislation appears to have no direct fiscal impact.

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 Commerce and Insurance
Department of Corrections
Department of Health and Senior Services
Department of Revenue
Department of Social Services
State Courts Administrator
State Prosecution Services
State Public Defender



Julie Morff
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January 14, 2020



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