

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3061-14  
Bill No.: Truly Agreed To and Finally Passed SS#2 for SCS for SB 591  
Subject: Civil Procedure; Health Care Professionals; Liability; Medical Procedures and Personnel  
Type: Original  
Date: June 4, 2020

Bill Summary: This proposal modifies provisions relating to civil actions

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue (appropriation reduction to LEF for cost avoidance)	\$0 to May exceed \$1,397,500	\$0 to May exceed \$1,677,000	\$0 to May exceed \$1,677,000
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0 to May exceed \$1,397,500</b>	<b>\$0 to May exceed \$1,677,000</b>	<b>\$0 to May exceed \$1,677,000</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Other State Funds	\$0 to \$349,375	\$0 to \$419,250	\$0 to \$419,250
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)
<b>Total Estimated Net Effect on Other State Funds</b>	<b>\$0 to May exceed (\$2,687,455)</b>	<b>\$0 to May exceed (\$3,224,947)</b>	<b>\$0 to May exceed (\$3,224,947)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 11 pages.

\* Indicates numbers that net to zero.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</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 2021</b>	<b>FY 2022</b>	<b>FY 2023</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 2021</b>	<b>FY 2022</b>	<b>FY 2023</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 **Capitol Police, Department of Agriculture, Department of Commerce and Insurance, Department of Conservation, Department of Economic Development, Department of Elementary and Secondary Education, Department of Health and Senior Services, Department of Higher Education and Workforce Development, Department of Mental Health, Department of Natural Resources, Department of Revenue, Department of Public Safety - Director's Office, Department of Public Safety - Division of Fire Safety, Department of Social Services, Joint Committee on Legislative Research, Gaming Commission, Governor's Office, House of Representatives, Lottery Commission, Office of Prosecution Services, Missouri Consolidated Healthcare Plan, MoDOT & Patrol Employees' Retirement System, Missouri National Guard, Missouri State Employee' Retirement System, Office of Administration - Budget and Planning, Missouri State Public Defender, Senate, State Auditor, State Courts Administrator, Department of Public Safety - State Emergency Management Agency, State Tax Commission, and University of Central Missouri** each assume this proposal has no direct fiscal impact.

Officials at the **Department of Labor** defer to the Office of Administration.

Officials at the **Department of Corrections** assume this proposal has an unknown impact.

Officials at the **Missouri Department of Transportation** assume this legislation could result in fewer punitive damage awards against the Missouri Highways and Transportation Commission.

Officials at the **Joint Committee on Administrative Rules** assume the legislation is not anticipated to cause an impact beyond its appropriation.

Officials at the **Secretary of State** assume that many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The Secretary of State's office 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 Secretary of State's office for Administrative Rules is less than \$5,000. The Secretary of State's office recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize 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 our office can sustain with our core budget. Therefore, we reserve 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 **City of Kansas City** assume this legislation might have a positive fiscal impact on Kansas City in an indeterminate amount by making it more difficult to assess punitive damages against Kansas City.

Officials at the **Missouri Highway Patrol** assume this proposal could limit the instances in which a claimant may successfully petition for punitive damages. To that effect, it may not have a fiscal impact, but could limit our exposure and any amount is unknown.

Officials at the **Office of the Attorney General (AGO)** assume this proposal has an unknown negative 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[.]”

In response to similar language regarding class actions in for SB 745 (2020) (§ 407.025), the **AGO** assumed that if this legislation becomes law, it will be more difficult for plaintiffs to receive punitive damages, thus the total amount of punitive damages awarded in Missouri will decrease. Since the Tort Victims' Compensation Fund is funded by liens on punitive damages, the Office of the Attorney General assumes that a decrease in punitive damages awarded will decrease the amount of funds generated through these liens for the Tort Victims' Compensation Fund.

It is not possible to know, though, the extent to which punitive damages awarded to plaintiffs will decrease under this proposal, therefore the AGO assumes it will have an unknown negative fiscal impact on the Tort Victims' Compensation Fund.

*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.”

Officials at the **Office of Administration** state that § 510.261 appears to create a higher burden on plaintiffs seeking punitive damages. This higher burden may result in either fewer claims for punitive damages being made against state agencies or employees, or result in more successful defense against such claims, either of which could result in potential savings to the Legal Expense Fund.

ASSUMPTION (continued)

The amount of the potential savings resulting from this legislation cannot be reasonably estimated as this language appears to create a new legal standard, subject to judicial interpretation. In addition, the number of potential claims, the severity of those claims, and the ultimate costs associated with any judgment resulting from those claims cannot be forecasted with any degree of assurance to their accuracy

**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.

*Legal Expense Fund (LEF) - \$0 to may exceed \$2,096,250*

“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, and that this proposal reduces the likelihood that a court will award punitive damages.

ASSUMPTION (continued)

State punitive damages paid by LEF in last five years			
Date Paid	Punitive Damages	Case	Claim(s)
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
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
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 \$8,385,000 under state law - averaging \$2,096,250 annually. Future punitive damage awards 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 \$2,096,250 each year in reduced LEF spending. The fiscal note for a previous version incorrectly showed a negative annual direct fiscal impact of \$0 to may exceed \$2,861,500, but that amount incorrectly included punitive damages paid under federal law.

According to information from OARM, 20% of the LEF's funds comes from other state funds. Therefore, Oversight will range the amount of direct fiscal impact to other state agencies from \$0 to May exceed \$2,096,50 in annual reduced LEF expenditures, with \$1,677,000 through General Revenue appropriations, and \$419,250 from other funds.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
<b>GENERAL REVENUE</b>			
<u>Savings</u> - potential reduction on pay outs of punitive damages from LEF (§§510.261, 510.263 & 510.265)	\$0 to May exceed <u>\$1,397,500</u>	\$0 to May exceed <u>\$1,677,000</u>	\$0 to May exceed <u>\$1,677,000</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<b>\$0 to May exceed</b> <b><u>\$1,397,500</u></b>	<b>\$0 to May exceed</b> <b><u>\$1,677,000</u></b>	<b>\$0 to May exceed</b> <b><u>\$1,677,000</u></b>
<b>OTHER STATE FUNDS</b>			
<u>Cost Savings</u> - Potential reduction in payments to Legal Expense Fund (§§510.261, 510.263 & 510.265)	<u>\$0 to \$349,375</u>	<u>\$0 to \$419,250</u>	<u>\$0 to \$419,250</u>
<b>ESTIMATED NET EFFECT TO OTHER STATE FUNDS</b>	<b><u>\$0 to \$349,375</u></b>	<b><u>\$0 to \$419,250</u></b>	<b><u>\$0 to \$419,250</u></b>
<b>LEGAL EXPENSE FUND (0692)</b>			
<u>Cost avoidance</u> - potential reduction of punitive damages pay outs from LEF (§§510.261, 510.263 & 510.265)	\$0 to May exceed \$1,746,875	\$0 to May exceed \$2,096,250	\$0 to May exceed \$2,096,250
<u>Transfer in</u> - Reduced GR & Other state funds appropriation (§§510.261, 510.263 & 510.265)	(\$0 to May exceed <u>\$1,746,875</u> )	(\$0 to May exceed <u>\$2,096,250</u> )	(\$0 to May exceed <u>\$2,096,250</u> )
<b>ESTIMATED NET EFFECT ON LEGAL EXPENSE FUND</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - State Government  
 (continued)

**TORT VICTIMS COMPENSATION FUND**

<u>Loss</u> - TVCF - potential reduction from pay outs of punitive damages to TVCF (§§510.261, 510.263 & 510.265)	\$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>
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<b>ESTIMATED NET EFFECT ON TORT VICTIMS' COMPENSATION FUND</b>	<b>\$0 to may exceed</b> <b><u>(\$3,036,830)</u></b>	<b>\$0 to may exceed</b> <b><u>(\$3,644,197)</u></b>	<b>\$0 to may exceed</b> <b><u>(\$3,644,197)</u></b>
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<u>FISCAL IMPACT - Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
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**LOCAL POLITICAL SUBDIVISIONS**

<u>Savings</u> - Potentially less punitive damages to pay out (§§510.261, 510.263 & 510.265)	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
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<b>ESTIMATED NET EFFECT TO 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

UNLAWFUL MERCHANDISING PRACTICES FOR NEW RESIDENCES (Section 407.020)

This act provides that an unlawful merchandising practice shall not include any advertisement, merchandise, or transaction in which the merchandise consists of a new residence in a transaction in which the buyer is offered and accepts an express warranty in the sale contract by the builder or by a third party warranty paid for by the builder and the sale contract includes a disclaimer. The act defines "residence" as a single-family house, duplex, triplex, quadruplex, or unit in a



FISCAL DESCRIPTION (continued)

multiunit residential structure in which the title to each individual unit is transferred to an owner under a condominium or cooperative system and includes common areas and common elements.

PROCEDURE FOR UNLAWFUL MERCHANDISING PRACTICES CLAIMS (Section 407.025)

A person seeking to recover damages for unlawful merchandising practices shall establish that the person acted as a reasonable consumer, that the alleged unlawful act would cause a reasonable person to enter into the transaction that resulted in damages, and the individual damages with sufficiently definitive and objective evidence to allow the loss to be calculated with a reasonable degree of certainty. A court may dismiss a claim for failure to show a likelihood that the alleged unlawful act would mislead a reasonable consumer. In a class action, any class representative shall establish these requirements. All other members of the class shall establish individual damages in a manner determined by the court.

In addition to current damages available, a court may provide equitable relief as it deems necessary to protect the party from the unlawful acts. No action may be brought under these provisions to recover damages for personal injury or death in which a claim arises out of the rendering of or failure to render health care services. Furthermore, this act provides that any award of attorney's fees shall bear a reasonable relationship to the amount of the judgment. However, when the judgment grants equitable relief, the attorney's fees shall be based on the amount of time reasonably expended.

PUNITIVE DAMAGES - GENERAL (Sections 510.261, 510.263, and 510.265)

This 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. Punitive damages may be awarded against an employer due to an employee's conduct in certain situations, as provided in the act. When an employer admits liability for the actions of an agent in a claim for compensatory damages, the court shall grant limited discovery consisting only of employment records and documents or information related to the agent's qualifications.

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. The amount of punitive damages shall not be based on harm to nonparties. A pleading seeking a punitive damage award may be filed only after the court determines that the trier of fact could

FISCAL DESCRIPTION (continued)

reasonably conclude that the standards for a punitive damage award, as provided in the act, have been met. The responsive pleading shall be limited to a response of the newly amended punitive damages claim.

Currently, if the 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 also be credited for punitive damages paid in a federal court.

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

PUNITIVE DAMAGES - Medical Malpractice (Sections 538.205 and 538.210)

This act modifies the definition of "punitive damages" as it relates 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 intentional conduct or malicious misconduct.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space. Provisions of this act apply to actions filed on or after August 28, 2020.

SOURCES OF INFORMATION

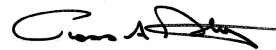
Capitol Police  
City of Kansas City  
Department of Agriculture  
Department of Commerce and Insurance  
Department of Conservation  
Department of Corrections  
Department of Economic Development  
Department of Elementary and Secondary Education  
Department of Health and Senior Services  
Department of Higher Education and Workforce Development  
Department of Labor  
Department of Natural Resources

SOURCES OF INFORMATION (continued)

Department of Public Safety - Director's Office and Fire Safety  
Gaming Commission  
Joint Committee on Administrative Regulations  
Joint Committee on Legislative Research  
Lottery Commission  
Missouri Consolidated Healthcare Plan  
Missouri Department of Transportation  
Missouri Highway Patrol  
Missouri National Guard  
Missouri State Employee' Retirement System  
MoDOT & Patrol Employees' Retirement System  
Office of Administration  
Office of Administration - Budget and Planning  
Office of the Attorney General  
Office of the Governor  
Prosecution Services  
Public Defender  
Secretary of State  
Senate  
State Auditor  
State Courts Administrator  
State Emergency Management Agency  
State Tax Commission  
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