

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3740S.01I  
 Bill No.: SB 669  
 Subject: Civil Procedure; Liability  
 Type: Original  
 Date: January 12, 2022

Bill Summary: This proposal modifies provisions relating to civil actions, including determinations of fault and immunity from products liability.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
<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 2023	FY 2024	FY 2025
Tort Victims Compensation 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>

\*Oversight assumes the reduction in punitive damages impacting the Tort Victims Compensation Fund would not reach the \$250,000 threshold.

Numbers within parentheses: () indicate costs or losses.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</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 2023</b>	<b>FY 2024</b>	<b>FY 2025</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 \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Office of the Attorney General (AGO)** assume that if this legislation becomes law, it could be more difficult for plaintiffs to receive punitive damages in some cases, thus the total amount of punitive damages awarded in Missouri will decrease. Since the Tort Victims' Compensation Fund (TVCF) is funded by liens on punitive damages, the AGO 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.

**Oversight** notes information provided by the AGO 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 (TVCF) were \$3,644,197.

The AGO does not track the types of claims payed into the TVCF, so this number is likely an overestimate, as it includes claims not affected by this proposal. Oversight notes on average from 2015 to 2020, the court heard 745 cases regarding personal injury from product liability actions according to the table below. Therefore, **Oversight** will show a \$0 to (unknown) fiscal impact to the TVCF.

	Tort	Tort	Tort	Tort	Tort	Tort	AVERAGE
	Cases	Cases	Cases	Cases	Cases	Cases	TORT CASES
	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>OVER 6 YEARS</u>
Asbestos	279	267	161	353	303	268	272
Employment Discrimination	691	777	915	991	748	733	809
Personal Injury Vehicular	4660	4,443	4,867	4,691	4,526	4,183	4,562
Personal Injury Fed-Empt Liability	35	46	49	52	55	64	50
Personal Injury Malpractice	529	569	559	556	587	589	565
Personal Injury Product Liability	2704	596	433	278	236	225	745
Personal Injury Other	2149	2,137	2,178	2,132	2,116	2,098	2,135
Property Damage	1776	2,223	2,227	2,146	2,112	2,569	2,176
Wrongful Death	752	684	654	631	594	583	650
Public Accommodation	15	26	20	22	11	12	18
Bulk Damages	11	14	14	23	15	15	15
Other Tort Cases	2113	2,483	2,026	1,873	1,884	1,812	2,032
TOTAL	15,714	14,265	14,103	13,748	13,187	13,151	14,028
Source: Tables 27 & 33 of OSCA's Statistical Annual Report Supplement							

Officials from the **Office of Administration (OA)** assume this proposal may change the way damages are allocated when there are multiple defendants. Costs to the state's Legal Expense Fund are unknown.

**Oversight** has requested additional information from the AGO and OA regarding the funds affected in their responses. Upon the receipt of this information, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval to publish a new fiscal note if needed. Oversight will assume this proposal will not fiscally impact the state's Legal Expense Fund.

Officials from the **Department of Commerce and Insurance**, the **Department of Labor and Industrial Relations** and the **Department of Revenue** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
<b>TORT VICTIMS COMPENSATION FUND</b>			
<u>Loss – AGO - potential reduction from payouts of punitive damages to TVCF</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON TORT VICTIMS COMPENSATION FUND</b>	<b>\$0 to <u>(Unknown)</u></b>	<b>\$0 to <u>(Unknown)</u></b>	<b>\$0 to <u>(Unknown)</u></b>

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT – Small Business

Small businesses involved in civil actions involving a product could be impacted as a result of this proposal.

FISCAL DESCRIPTION

This act modifies provisions relating to civil actions, including the determination of fault of parties and nonparties and immunity from liability for certain designers, manufacturers, sellers, and lessors of products.

DETERMINATION OF FAULT OF PARTIES & NONPARTIES (SECTIONS 537.059, 537.060, & 537.067)

In all tort actions in which any party contends that damages were caused by the alleged fault of more than one person or entity, the trier of fact shall determine the amount of fault attributable to each person or entity, regardless of whether the person or entity is a party to the action and regardless of whether the person or entity has settled or been released from liability. Fault of another person or entity may be alleged by any party in the action in any claim, counterclaim, cross-claim, or as an affirmative defense. Any determination of fault attributable to a person or entity not a party to the action shall not be binding against or otherwise affect the rights or liabilities of the person or entity.

Current law provides that an agreement by release, covenant not to sue or not to enforce a judgment given in good faith to one of two or more persons liable in tort for the same injury or wrongful death shall reduce the claim for damages by the greater of either the stipulated amount of the agreement or the amount of consideration paid. Further, the agreement shall discharge the tort-feasor to whom it is given from all liability for contribution or noncontractual indemnity, as defined, to any other tort-feasor. This act repeals this provision and provides that in all tort-actions for damages, if the defendant is found to bear 51% or more of the fault, then the defendant shall be jointly and severally liable for the amount of the judgment less the total of any stipulated amount in any release, covenant not to sue or not to enforce a judgment under any agreement with any other person or entity alleged to have been at fault, or any consideration paid by such person or entity, whichever is greater.

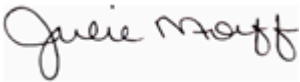
IMMUNITY FROM LIABILITY FOR CERTAIN DESIGNERS, MANUFACTURERS, SELLERS, AND LESSORS OF PRODUCTS (SECTION 537.767)

This act provides that in any civil action for personal injury, death, or property damages caused by a product the plaintiff shall prove that the defendant designed, manufactured, sold, or leased the particular product that is alleged to have caused the injury and not a similar or equivalent product. Designers, manufacturers, sellers, or lessors of products not identified as used, ingested, or encountered by the injured party shall not be held liable for the alleged injury. A person, firm, corporation, association, partnership, or entity whose design is copied or otherwise used by a manufacturer without the designer's express authorization shall not be subject to liability for personal injury, death, or property damage even if the use of the design was foreseeable.

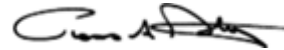
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office  
Office of Administration  
Department of Commerce and Insurance  
Department of Labor and Industrial Relations  
Department of Revenue  
Office of the State Courts Administrator



Julie Morff  
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January 12, 2022



Ross Strobe  
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