

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 5158-02  
Bill No.: HB 2309  
Subject: Employees- Employers; Labor and Industrial Relations Department; Labor and Management; Workers Compensation  
Type: Original  
Date: March 25, 2008

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Bill Summary: This proposal changes laws regarding workers' compensation.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>
General Revenue	(Unknown) to Unknown greater than \$235,925	(Unknown) to Unknown greater than \$235,925	(Unknown) to Unknown greater than \$235,925
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Unknown) to Unknown greater than \$235,925</b>	<b>(Unknown) to Unknown greater than \$235,925</b>	<b>(Unknown) to Unknown greater than \$235,925</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 9 pages.

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>
Workers Compensation Administration Fund	(Unknown)	(Unknown)	(Unknown)
Second Injury Fund	Unknown	Unknown	Unknown
Road Fund	Unknown	Unknown	Unknown
Conservation Fund	Unknown	Unknown	Unknown
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(Unknown) to Unknown</b>	<b>(Unknown) to Unknown</b>	<b>(Unknown) to Unknown</b>

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</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 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

### FISCAL ANALYSIS

#### ASSUMPTION

Officials at the **Department of Labor and Industrial Relations (DOLIR)** assume this legislation abrogates a Supreme Court decision regarding the Second Injury Fund. DOLIR at this time is unable to determine how the recent Missouri Supreme Court decision in Schoemehl v. Treasurer of the State of Missouri, 217 S.W. 3d 900 (Mo 2007) will impact Second Injury Fund payouts for cases involving permanent total disability benefits over the long term. A recent Actuarial Review of the Second Injury Fund (completed July 30, 2007) determined that this court decision, which this legislation abrogates, "...has a relatively insignificant impact on expected calendar payments for the next five years... [2008 to 2012]." Since this legislation abrogates the Schoemehl decision, such action would create a savings for the Fund, however, DOLIR cannot determine the amount of savings.

For Permanent Total Disability (PTD) benefits, the bill requires termination of PTD benefits when the claimant becomes eligible for full Social Security retirement benefits. The Department believes this change will create a savings for the SIF. In 2007, the PTD benefits paid to persons who had reached the age of 60 in 2007 was \$15,253,523.00. If the age of eligibility for purposes of the bill is 65 or older, then termination of PTD at that point will create a significant savings for the SIF.

With the deletion of the language requiring payback of any advance from the workers' compensation administrative fund to the SIF, there is no requirement in the law that any advance be paid back to the workers' compensation administrative fund from the SIF. If there is payback requirement, then it is assumed that multiple advances to the SIF could have a significant

ASSUMPTION (continued)

cost impact on the workers' compensation administrative fund. The extent of any costs impact would depend upon how much is advanced. Therefore the cost impact at this time is unknown.

The bill also eliminates Permanent Partial Disability (PPD) as a SIF benefit. For fiscal year 2007, the SIF paid out \$17,653,326.38 in PPD benefits. After all pending PPD claims are paid this would be the minimum amount saved by the SIF. The savings would increase over the years as pending PPD claims are paid.

Officials at the **Office of Administration** assume the State of Missouri's self-insured workers' compensation program, the Central Accident Reporting Office (CARO) covers state employees (excluding MoDOT, Missouri State Highway Patrol and University of Missouri systems). CARO is currently obligated to ongoing weekly benefits to 14 past state employees deemed to be permanently and totally disabled. Of these, 13 cases have the potential for extended dependent obligations at the time of death of the employee resulting from the Schoemehl decision. Currently CARO does not maintain dependent status on these 13 cases. In addition to these cases, CARO has identified an additional 19 cases that may result in permanent total disability in the very near future.

The U.S. Census Bureau indicates of the total households of one wage earner and two earners or more, single wage earner households account for 50% of the total. Applying the 50% to the 13 cases, 6.5 cases may be single wage earner households, thus at the time of death of the employee, the spouse may be a sole dependent. The average weekly compensation rate for these cases is \$252.35 multiplied by the 6.5 cases equate to \$1,640.28 in weekly benefits. Of the additional 19 cases, 9.5 cases would be considered as possible single wage earner households with spouses as sole dependents. The average weekly compensation rate for these cases is \$304.92 multiplied by the 9.5 cases equate to \$2,896.74. Combining the two sets, the total weekly obligation to extend benefits to sole dependents is \$4,537.02 or \$235,925.04 annually.

The length of this obligation is difficult to assume. However assuming the employee should die of natural causes and that the spouse may be near the age of the employee, we are projecting 10 additional years for the remaining spouse. Therefore the savings would be for approximately 10 years for the cases identified. This does not take into consideration any minors that may be deemed to be sole dependents at time of the employee's death.

While the state, to date, has not yet incurred any additional cost due to the Schoemehl decision, we do assume an annual cost savings of approximately \$235,925 to the State of Missouri with the proposed legislation. No cost inflator is utilized in that weekly compensation rates remain the same throughout the period of obligation.

ASSUMPTION (continued)

Additional savings would be realized from termination of permanent total disability for employees eligible for Social Security retirement or other retirement benefits in lieu of Social Security. The state is currently paying on 14 permanent total disability cases and negotiates potential permanent total cases annually. The average employee age of the current 14 cases is 64. Fifty percent of these cases exceeding 62 years in employee age. Five cases exceed 66 years in age with an annual payout of just over \$62,000. While these five cases would likely terminate immediately with the proposed change in legislation, the full extent of the potential savings cannot be determined at this time as the life expectancy would vary on each case.

This change would also likely have an effect on settlement negotiations of potential permanent total cases as employees may choose to take a lump sum as opposed to ongoing permanent total disability. The savings would likely be significant, however cannot be determined at this time.

It is also possible that some of the compensation for permanent partial disability that was available from the Second Injury Fund would be pursued against the employer/insurer from the primary injury. Therefore there is the potential for increased cost to the state's self-insured workers' compensation program that cannot be determined at this time.

Officials at the **Missouri Department of Transportation (MoDOT)** assume that MHTC is self-insured to provide workers' compensation coverage to employees. This legislation will have a positive fiscal impact on MoDOT/MHTC if it passes.

Officials at the **Department of Conservation** assume this proposed legislation could have a potential positive fiscal impact on MDC funds, since it provides for the termination of permanent total disability payments when the employee is eligible to receive full Social Security retirement benefits under the Social Security Act or other retirement benefits in lieu of Social Security retirement benefits. The exact amount of impact is unknown.

Officials at the **Office of the Attorney General** assume that the various provisions of this proposal will create a potential cost savings in the long term.

Officials at the **Administrative Hearing Commission, Department of Insurance, Financial Institutions and Professional Registration** and the **Office of the State Treasurer** assume that there is no fiscal impact from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2009	FY 2010	FY 2011
<b>GENERAL REVENUE</b>			
<u>Cost - CARO</u>			
permanent partial disability payments	(Unknown)	(Unknown)	(Unknown)
<u>Savings - CARO</u>			
Second Injury Fund payouts	<u>Unknown greater than \$235,925</u>	<u>Unknown greater than \$235,925</u>	<u>Unknown greater than \$235,925</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<b><u>(Unknown) to Unknown greater than \$235,925</u></b>	<b><u>(Unknown) to Unknown greater than \$235,925</u></b>	<b><u>(Unknown) to Unknown greater than \$235,925</u></b>
<b>WORKERS COMPENSATION ADMINISTRATION FUND</b>			
<u>Loss - Department of Labor</u>			
elimination of pay-back provisions	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON WORKERS COMPENSATION ADMINISTRATION FUND</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
<b>SECOND INJURY FUND</b>			
<u>Savings- Dept. of Labor</u>			
Second Injury Fund pay-outs	Unknown	Unknown	Unknown
<u>Savings - Dept. of Labor</u>			
elimination of pay-back provisions	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>ESTIMATED NET EFFECT ON SECOND INJURY FUND</b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>
<b>ROAD FUND</b>			

<u>Savings - MoDOT</u>			
Second Injury Fund pay-outs	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>ESTIMATED NET EFFECT ON ROAD FUND</b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>
<b>CONSERVATION FUND</b>			
<u>Savings - Department of Conservation</u>			
Second Injury Fund payouts	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>ESTIMATED NET EFFECT ON CONSERVATION FUNDS</b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>
<u>FISCAL IMPACT - Local Government</u>	FY 2009	FY 2010	FY 2011
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This bill changes the law regarding workers' compensation. In its main provisions, the bill:

- (1) Specifies that in applying the provisions of the Workers' Compensation Law it is the intent of the legislature to reject and abrogate Schoemehl v. Treasurer of the State of Missouri, 217 S.W.3d 900 (Mo. banc 2007) and all cases interpreting, applying, or following this case and reaffirms that the right for compensation for permanent total disability of an injured employee terminates on the date of the injured employee's death;
- (2) Specifies that permanent total disability (PTD) payments from the Second Injury Fund end upon the employee becoming eligible to receive full Social Security retirement benefits;

FISCAL DESCRIPTION (continued)

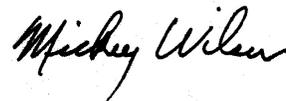
- (3) Specifies that PTD payments from the fund terminate if the employee becomes gainfully employed;
- (4) Specifies that the Labor and Industrial Relations Commission retains jurisdiction of the case during the lifetime of any injured employee who has received an award of PTD payments;
- (5) Specifies that prior disabilities can be combined only once with a subsequent work injury to obtain permanent partial disability (PPD) payments from the fund;
- (6) Specifies that all prior disabilities can be combined for PTD payments against the fund;
- (7) Prohibits payments from the fund for PPD if there is jurisdiction in another state due to the employee's injury or occupational disease;
- (8) Specifies that when an employer has failed to obtain insurance and there is concurrent jurisdiction in another state, the fund is not responsible for medical expenses or death benefits for his or her employees;
- (9) Reinstates the within two years of the date of the medical treatment or service statute of limitation regarding claims against the fund for medical fees or expenses; and
- (10) Eliminates the provision requiring moneys advanced from the Workers' Compensation Fund to the Second Injury Fund be paid back to the Workers' Compensation Fund by December 31 of the year following the advance.

The bill contains an emergency clause.

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  
Administrative Hearing Commission  
Department of Conservation  
Office of the State Treasurer  
Department of Insurance, Financial Institutions and Professional Registration  
Office of the Attorney General  
Missouri Department of Transportation



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