

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0162-05
Bill No.: Truly Agreed To and Finally Passed SCS for HS for HCS for HB 107
Subject: Tort Victims' Compensation Fund; Missouri CASA Fund; Legal Services for Low-Income People Fund
Type: Original
Date: May 22, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Legal Services for Low-Income People	\$1,917,240	Unknown	Unknown
Tort Victims' Compensation	(\$2,244,296 to Unknown)	(\$335,751 to Unknown)	(\$344,269 to Unknown)
Missouri CASA	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> State Funds	(\$327,056 to Unknown)	(\$335,751 to Unknown)	(\$344,269 to Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Transportation, Department of Natural Resources, Office of Administration – Division of Budget and Planning, Department of Social Services – Division of Budget and Finance, Office of Administration - Division of Accounting,** and the **Office of Administration – Division of General Services** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Department of Revenue** assume the proposed legislation would have little or no administrative impact on their agency.

In response to similar legislation (SCS for HS for HCS for HB 107), officials from the **Office of State Treasurer (STO)** assume the proposed legislation would have no fiscal impact on their agency, assuming the STO would not be responsible for calculating, creating or distributing the payments.

In response to similar legislation (HS for HCS for HB 107), officials from the **Office of Prosecution Services** and the **Office of State Public Defender** assume the proposed legislation would have no fiscal impact on their agencies.

Assumptions in reference to component of proposal addressing Tort Victims' Compensation Fund

Officials from the **Office of Secretary of State (SOS)** assume this proposal creates a lien of 50% of certain punitive damages for the Tort Victims' Compensation Fund and the Legal Services for Low-Income People Fund which requires the Division of Workers' Compensation to promulgate rules to implement the proposal. Based on experience with other divisions, the rules, regulations and forms issued by the Division of Workers' Compensation could require as many as approximately 24 pages in the Code of State Regulations. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes and the like are not repeated in Code. These costs are estimated. The estimated cost of a page in the Missouri Register is \$23.00. The estimated cost of a page in the Code of State Regulations is \$27.00. Therefore, the estimated costs for FY 02 are \$1,476. The actual costs could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded and withdrawn.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

ASSUMPTION (continued)

Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

In response to similar legislation (HCS for HB 107), officials from the **Department of Social Services – Division of Legal Services** assume the proposed legislation would not have a fiscal impact on their agency. Officials noted that if funds are available to Legal Services Corporations through the Tort Victims' Compensation Fund, it is assumed that the department will continue to be involved in the disbursement of general revenue funds appropriated by the Legislature for Legal Services Corporations and ensuring that the Legal Services Corporations submit required reports to the Legislature.

In response to similar legislation (HCS for HB 107), officials from the **Office of Attorney General** noted that they do not know the number of claims that will be appealed to the LIRC and therefore, they do not know how many cases they will defend. Additionally, officials from the AGO do not know how many cases they might bring in subrogation. Officials assume that this number will be minimal and that costs can be absorbed.

Officials from the **Department of Labor and Industrial Relations – Division of Workers' Compensation (DOL)** assume the proposed legislation establishes responsibility in the Division of Workers' Compensation to administer and adjudicate claims of uncompensated tort victims against the Tort Victims' Compensation Fund.

The DOL will establish and maintain a Tort Victims' Compensation Unit to receive, process, and make awards for uncompensated tort victims. The DOL will also establish and maintain a procedure to adjudicate these claims.

The impact of this program is very difficult for the DOL to assess. In FY 98, the Office of the State Courts Administrator reported that 20,282 tort cases were disposed of. Over the last three fiscal years the average number of tort cases disposed of is 19,264. This includes settlements, dismissals, defendants' verdicts, plaintiffs' verdicts, and default judgments. It is impossible to determine how many cases will result in a verdict for the plaintiff that are uncollectible. This type of data is not collected. It is also impossible to determine how many uninsured motorist claims will be filed as tort cases because of accessibility to these funds. Attempts to obtain this type of information were made with the Missouri Association of Trial Attorneys and the Missouri Department of Insurance, respectively concerning SB 464 in the 1999 legislative session.

Funding for this program on an ongoing basis is questionable. The statute provides for 65% of punitive damages awards in final judgments to be paid to the Division into the Tort Victims' Compensation Fund. Currently, there are moneys over seven million dollars (\$7,000,000) in the Fund. This funding came from two unusual cases in Kansas City where the plaintiffs and

ASSUMPTION (continued)

defendants absolutely refused to settle the claim. This information is from the Attorney General's Office. In most cases, the plaintiff and defendant settle any punitive damages, even after a jury award. This usually happens while the case is on appeal. Because the case is settled, there would be no final judgment and no payment to the Fund.

Since almost all cases involving tort claims involve claimant attorneys, it is assumed the potential for claims in cases of unsatisfied plaintiffs' judgements will be very high. For the purpose of this fiscal note, the DOL assumes 10% of all cases disposed of will result in claims against the fund. Based on information previously cited, this is an average of 1,926 claims filed per year (19,264 x 10%). This average is very close to the number of claims filed with the DOL's Crime Victims' Compensation program each year. In FY 96 a total of 1,652 claims were disposed of, in FY 97 a total of 2,206 claims were disposed of, in FY 98 a total of 1,688 claims were disposed of by the Crime Victims' Compensation program.

The DOL assumes the parameters of the Tort Victims' Compensation program in verifying medical, funeral and legal bills, verifying court action and other requirements to establish the validity of a claim under this proposal are also very similar to the manner in which crime victim's compensation claims are handled. For that reason, DOL assumed staffing needs similar to the Crime Victims' Compensation program would be needed to handle the claims process. This includes one (1) Program Manager, one (1) Clerk Typist IV and five (5) Clerk Typists III. To ensure proper funding, this program must also employ one (1) Legal Counsel to ensure compliance with the statutory provisions and the myriad of legal issues involved in tort claims to ensure proper funding.

In reference to expense and equipment requests of the DOL, **Oversight** has eliminated the rent expense, assuming these employees could be located in existing space; eliminated the office equipment associated with locating these employees separately from other DOL employees; and reduced the estimated cost of PC printers.

Oversight notes that the balance in the Tort Victims' Compensation Fund as of January 31, 2001 was \$7,373,998. As a result of this proposal, Oversight assumes that 26% of this balance to be transferred to the Legal Services for Low-Income People Fund. This equates to approximately \$1,917,240. Oversight has reflected this figure in the fiscal impact specifications below for FY02. Oversight assumes unknown impact in FY03 and FY04.

Assumptions in reference to component of the proposal addressing the CASA Fund

Officials from the **Office of State Courts Administrator (CTS)** state the proposed legislation would create a "Missouri CASA Fund." The proposal also imposes a \$2.00 surcharge on all domestic relations cases to be collected for the fund.

ASSUMPTION (continued)

In FY 2000, there were 100,468 domestic relations cases filed in the courts. Assuming a 100% collection rate, which is unlikely, there would be \$200,936 available for the fund.

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
LEGAL SERVICES FOR LOW-INCOME PEOPLE FUND			
<u>Transfer in</u> - Punitive damage awards From Tort Victims' Compensation Fund (26%)	<u>\$1,917,240</u>	<u>Unknown</u>	<u>Unknown</u>
TORT VICTIMS' COMPENSATION FUND			
<u>Transfer out</u> - Punitive damage awards To Legal Services for Low-Income People Fund (26%)	(\$1,917,240)	(Unknown)	(Unknown)
<u>Cost</u> - Labor and Industrial Relations			
Personal Service (8 FTE)	(\$197,106)	(\$242,440)	(\$248,501)
Fringe Benefits	(\$65,695)	(\$80,805)	(\$82,825)
Equipment and Expense	(\$64,255)	(\$12,506)	(\$12,943)
Total costs - DOL	(\$327,056)	(\$335,751)	(\$344,269)
ESTIMATED NET EFFECT ON TORT VICTIMS' COMPENSATION FUND	<u>(\$2,244,296)</u>	<u>(\$335,751 to Unknown)</u>	<u>(\$344,269 to Unknown)</u>
MISSOURI CASA FUND			
<u>Revenues</u> - From surcharge	\$200,936	\$200,936	\$200,936
<u>Costs</u> - Expenditures on CASA Programs	(\$200,936)	(\$200,936)	(\$200,936)
ESTIMATED NET EFFECT ON MISSOURI CASA FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
	<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.

DESCRIPTION

This act establishes procedures for collection of moneys into, and disbursement of moneys from, the Tort Victims' Compensation Fund. Any person filing a punitive damages claim in a Missouri state court must notify the Attorney General of the claim. In the event of a final judgment for punitive damages, the State has a lien against one-half (50%) of the punitive damages award, which shall be collected and deposited into the Tort Victims' Compensation Fund. In the event of a pre-judgment arbitration, mediation or settlement between the parties, the state has no claim or lien.

LEGAL SERVICES FOR LOW-INCOME PEOPLE FUND (26%) – The act establishes the Legal Services for Low-Income People Fund which is to receive 26% of the moneys received by the Tort Victims' Compensation Fund. These moneys shall be distributed to legal services organizations across the state and used solely to provide legal services to local low-income persons at the discretion of the existing local governing boards. Moneys in the Fund shall not be used for any Article X refund of excess state revenue.

DIVISION OF WORKERS' COMPENSATION (74%) – The act directs that 74% of the moneys received by the Tort Victims' Compensation Fund be distributed to the Division of Workers' Compensation to assist uncompensated tort victims. To qualify as an "uncompensated tort victim", a person must meet several criteria, including having made diligent attempts to enforce a civil tort judgment. Incarcerated individuals, or those who were guilty of two or more felonies, at least one of which involved drugs or violence, are not eligible. Moneys in the Fund shall not be used for any Article X refund of excess state revenue.

Claims for fund proceeds must be filed with the Division within 2 years of obtaining a court judgment for personal injury or wrongful death. The act establishes application requirements for requests for disbursement of funds and it affords the Division of Workers' Compensation discretion in awarding of funds, subject to certain limitations on award amounts, including a \$300,000 per award cap. The Division may determine its awards based upon the applications only, or it may hold evidentiary hearings on any claims. Failure of a medical provider to submit

DESCRIPTION (continued)

requested medical records to the Division shall be an infraction.

No incarcerated person may receive an award from the fund during his or her period of incarceration. No application or claim for funds constitutes a lien against the state.

A party aggrieved by a decision of the Division may appeal within 20 days to the appellate court with jurisdiction. The Attorney General shall defend the Commission's decision. The Division shall have a lien on any compensation received by the claimant, in the event an uncompensated tort victim collects partial or total satisfaction from the tortfeasor after having received an award from the Tort Victims' Compensation Fund.

The Division of Workers' Compensation is authorized to promulgate rules and regulations governing application for and distribution of the funds which the Division receives from the Tort Victims' Compensation Fund.

The proposal also creates the Missouri CASA Fund. The Office of State Courts Administrator will administer and disburse moneys in the funds based on named requirements. A \$2.00 surcharge on all domestic relations cases is to be collected for the fund.

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 Revenue
Office of Secretary of State
Office of Prosecution Services
Office of Administration – Division of Budget and Planning
Office of Administration – Division of General Services
Office of Administration – Division of Accounting
Department of Social Services – Division of Budget and Finance
Department of Social Services – Division of Legal Services
Office of the State Treasurer
Department of Natural Resources
Office of State Courts Administrator
Department of Transportation
Department of Labor and Industrial Relations
Office of State Public Defender
Office of Attorney General

NOT RESPONDING

Office of Attorney General
Office of State Public Defender
Office of State Treasurer
Office of Prosecution Services



Jeanne Jarrett, CPA
Director

May 22, 2001