

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2222H.011
Bill No.: HB 1265
Subject: Workers Compensation; Labor and Management; Employees - Employers;
Business and Commerce; Labor and Industrial Relations, Department of
Type: Original
Date: March 19, 2021

Bill Summary: This proposal modifies provisions relating to workers' compensation.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
Total Estimated Net Effect on General Revenue	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Various State Funds	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Workers Compensation Fund (0652)	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Various State Agencies			
Total Estimated Net Effect on FTE	0	0	0

- 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.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Local Government	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state:

Proposed Section 287.140.1:

The accident or occupational disease must be the prevailing factor in causing the injury or medical condition and the prevailing factor in the need for treatment.

The proposed legislation could affect the number of requests for hardship hearings that the Division of Workers' Compensation (Division) receives, the number of hardship hearings the Administrative Law Judges (ALJs) would conduct, and the number of awards that the ALJs would need to write and issue related to these hearings, because currently an injured employee need only prove that the need for treatment and medication flow from the work injury, and the proposed language would change that standard by requiring an injured employee to prove that the work injury was the "prevailing factor" in causing the need for treatment and medication.

Interlocutory disputes between an injured worker and his or her employer regarding whether and to what extent the injured worker is entitled to medical treatment are tried and resolved at a "hardship hearing" before an administrative law judge; the Division also conducts "§ 287.203 hardship hearings" when the parties dispute issues related to temporary total and temporary partial disability compensation.

In CY 2020, the Division received 366 hardship hearing requests (excluding §287.203 hearing requests). In CY 2019, the Division received a total of 587 hardship hearing requests (excluding §287.203 hearing requests). In CY 2020, ALJs conducted a total of 81 hardship hearings (excluding §287.203 hearings), notwithstanding the COVID-19 Pandemic. In CY 2019, ALJs conducted a total of 224 hardship hearings (excluding §287.203 hearings). The number of hardship hearings requested could be affected by the legislation. The Department cannot predict the magnitude of those changes until implementation. If current resource levels are not sufficient to cover additional requests, the Department may need additional resources to meet the demand.

For further details relating to conferences, prehearings, mediations and evidentiary hearings including hardship hearings and section 203 hardship hearings held in CY2019 and CY 2020, please refer to the Division of Workers' Compensation Annual Reports.

Proposed section 287.270.1 - The proposed language would potentially result in savings to the employer because it provides for any savings or insurance from sources other than employer's workers' compensation insurance carrier to be applied for determining the compensation due to an injured employee.

The Division believes it can absorb any telephone calls or requests for assistance received from employees who do not receive compensation benefits an employee is entitled to receive under the Act.

Oversight notes that for purpose of this fiscal note it will not use DOLIR's 2020 Annual Report for analysis of this proposal due to the uncharacteristic nature of the COVID-19 variation of such cases.

Oversight notes Division of Workers' Compensation 2019 Annual Report, through 12/8/2019, the division resolved 25,566 workers' compensation cases by ALJ's which includes requests for conference, pre hearing, mediation, dismissals, and evidentiary hearings. From those, 5,821 cases were dismissed, 19,337 cases settled, and 408 cases resulted in award. This number does not include cases that have been continued and reset for a future docket setting based upon a written request of the parties or at a prior docket setting. There were 1,375 requests for hearing which includes requests for hearing on final award; 287.203 or hardship hearing requests; and Second Injury Fund (SIF) claims. As of October 2019 the Division has 28 full time ALJs on staff. It can be assumed that each ALJ handles on average 912 cases ($25,556/28 = 912$) per year; however, not all cases would result in hearing.

Oversight notes that DOLIR received 224 hardship hearing in 2019 and with the given number of 28 ALJs (current staff) it would result in an approximate 8 ($224: 28 = 8$) additional cases annually for each of the ALJs. Oversight assumes the DOLIR would be able to absorb the additional caseload that may result from this proposal within their existing appropriation. Therefore, Oversight will reflect a zero administrative impact for DOLIR for purposes of this fiscal note.

Officials from the **Office of Administration (OA)** state the proposal changes the definition of injury and occupational disease in workers compensation. These changes appear to create increased levels of proof required to establish an injury or occupational disease. However, the cost avoidance or increase to the state is unknown. The amount of such cost avoidance or increase, if any, cannot be estimated as it would depend on the facts and circumstances of each case and judicial interpretation of the changes.

Oversight notes that DOLIR assumes that in the current version of the law, the employee need only prove that the need for treatment and medication flow from the work injury, and the new proposed language would change that standard by requiring an injured employee to prove that the work injury was the "prevailing factor" in causing the need for treatment and medication.

Oversight assume the Workers' Compensation Fund as well as other funds could potentially have some savings in the form of fewer claims. Therefore, **Oversight** will range the impact from \$0 (no change of the claims against the fund) to a positive unknown (employees do not meet the higher thresholds).

Officials from the **Attorney General's Office (AGO)** assume any additional litigation costs

arising from this proposal can be absorbed with existing personnel and resources, however, the AGO may seek additional appropriations if there is a significant increase in litigation.

Oversight assumes the AGO could absorb the costs of any additional litigation costs arising from this proposal. If multiple bills pass which require additional litigation costs at substantial costs, the AGO could require additional resources.

Officials from the **Department of Corrections (DOC)** assume Section 287.270 states that an employer can be responsible for disputed medical bills if determined so by the commission or administrative law judge. This proposed legislation may have a cost to the department, should an administrative law judge or the commission hold the department responsible for disputed medical bills for employees who have experienced a work-related injury.

Oversight notes that the DOC has stated the proposal would have a direct fiscal impact on their organization. Oversight assumes the proposal would not increase the number of successful workers compensation claims against the department. Oversight assumes Subsection 287.270.2 would not increase the number or amount of workers compensation payouts.

Oversight assumes the proposal increases the threshold for a claim to qualify as a workers compensation claim. Therefore, Oversight will assume a potential savings to state funds and local political subdivisions.

Officials from the **Department of Commerce and Insurance, Department of Health and Senior Services, Department of Public Safety - State Emergency Management Agency, Department of Public Safety - Capital Police, Department of Public Safety - Fire Safety**

Officials from the **Missouri Department of Transportation (MODOT)** assume the proposal would not have a direct fiscal impact on their organization.

Officials from the **Department of Public Safety – Missouri Highway Patrol** defer to the MoDOT for the potential fiscal impact of this proposal.

Officials from the **Missouri University System, Missouri State University, State Technical College of Missouri, and University of Central Missouri** each assume the proposals will not have a direct fiscal impact on their respective organizations.

Officials from the **City of Claycomo, City of Corder, City of Springfield, City of Kansas City and Springfield R-XII School** each assume the proposal will not have a direct fiscal impact on their respective organizations.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other cities, counties, schools, colleges, and universities were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
GENERAL REVENUE FUND			
<u>Cost Avoidance – higher threshold for workers compensation claims</u>	\$0 or <u>Unknown</u>	\$0 or <u>Unknown</u>	\$0 or <u>Unknown</u>
NET EFFECT ON GENERAL REVENUE	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
VARIOUS STATE FUNDS			
<u>Cost Avoidance – higher threshold for workers compensation claims</u>	\$0 or <u>Unknown</u>	\$0 or <u>Unknown</u>	\$0 or <u>Unknown</u>
NET EFFECT ON VARIOUS STATE FUNDS	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
WORKERS COMPENSATION FUND (0652)			
<u>Cost Avoidance - lesser amount of claims 287.020.5 & 287.070</u>	\$0 or <u>Unknown</u>	\$0 or <u>Unknown</u>	\$0 or <u>Unknown</u>
NET EFFECT ON THE WORKERS COMPENSATION FUND	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
LOCAL POLITICAL SUBDIVISIONS			
<u>Cost Avoidance – higher threshold for workers compensation claims</u>	\$0 or <u>Unknown</u>	\$0 or <u>Unknown</u>	\$0 or <u>Unknown</u>
NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>

FISCAL IMPACT – Small Business

The businesses would be impacted by this proposal in that the cost of workers' compensation insurance may decrease due to the provision allowing for the consideration of "any benefits derived from any source other than the employer or employer's insurer for liability under this chapter" in determining the workers' compensation benefits.

If administrative law judges take into account benefits injured workers receive from personal health insurance, personal disability insurance, unemployment benefits, and social security benefits, while recovering from work-related injuries, workers' compensation benefits will likely be reduced, which may reduce workers' compensation premiums.

FISCAL DESCRIPTION

This bill modifies the definition of "prevailing factor" which is used to determine if an injury by accident is subject to compensation. The prevailing factor is the primary factor, in relation to any other factor, causing the injury, the resulting medical condition, the disability, and the need for treatment.

The bill also requires consideration of any savings or insurance of the injured employee, benefits derived from the employer's insurance, and any savings or insurance procured or sponsored by the employer, when determining compensation as specified in the bill.

Administrative Law Judges or the Labor and Industrial Relations Commission shall have authority to order employers to make payments only to the medical provider or providers to whom bills are due in cases where they determine the employer is responsible for medical bills.

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

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SOURCES OF INFORMATION

Department of Labor and Industrial Relations

Missouri Department of Conservation

Department of Corrections

Missouri Department of Transportation

Department of Commerce and Insurance

Department of Health and Senior Services

Department of Public Safety

Missouri University System

Missouri State University

State Technical College of Missouri

University of Central Missouri

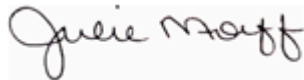
City of Kansas City

City of Claycomo

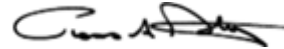
City of Corder

City of Springfield

Springfield R-XII School



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March 19, 2021



Ross Strobe
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