



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

HB 20-1348

FISCAL NOTE

Drafting Number: LLS 20-0970
Prime Sponsors: Rep. Kennedy, Sen. Gonzales

Date: April 17, 2020
Bill Status: House Judiciary
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Bill Topic: ADDITIONAL LIABILITY UNDER RESPONDEAT SUPERIOR

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

This bill allows a plaintiff in a civil tort claim to bring additional claims against the employer arising out of the same incident as the one involving an employee. It will increase state and local revenue, workload, and potential expenditures on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Summary of Legislation

In 2017, the Colorado Supreme Court held that when an employer admits liability for the certain actions of its employee, the plaintiff cannot assert additional claims against the employer arising out of the same incident. This bill reverses the court's decision and allows a plaintiff in a civil tort claim to bring additional claims against the employer arising out of the same incident as the one involving an employee.

Under the bill, when an employer admits liability for the tortious actions of its employee, a plaintiff can assert additional claims against the employer. The employer does not avoid liability for negligent acts by admitting that an employee was in the course or scope of employment when the tortious act was committed. An employer may be held responsible for its own direct negligence, including derivative and non-derivative claims. It is not a defense that one party's negligence must combine with another party's negligence to result in an injury or death. The trier of fact will apportion the degree of negligence to each party.

State Revenue

The bill may increase civil case filings in the Judicial Department by a minimal amount. For informational purposes, the current civil case filing fee is \$235. Fee revenue is subject to TABOR.

State Expenditures

The bill may increase workload and General Fund expenditures in the Department of Law and the Department of Personnel and Administration (DPA), and may increase workload in the Judicial Department. These impacts are discussed below.

Department of Law. The bill may increase the number of cases in which state employees are defendants. If necessary, the Department of Law may seek General Fund appropriations through the annual budget process as more case data becomes available.

Department of Personnel and Administration. If a significant number of claims arise, the DPA may require additional General Fund to keep the Risk Management Fund solvent. The risk management program's actuary will capture the claim costs as well as external legal costs in the actuarial analysis of the state's experience, and this analysis will form the basis for any adjustments through the annual budget process.

Judicial Department. The bill may increase civil cases filed in the trial courts, as the ability to bring additional claims from the same incident may encourage plaintiffs to file. The Judicial Department would have to see 549 additional civil cases filings before it requires an additional 1.0 FTE district court judicial officer. This bill is not anticipated to reach this threshold and no change in appropriations is required.

TABOR refunds. Under the March 2020 LCS Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2020-21 or FY 2021-22, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

Local Governments

Similar to the state, if the legislation increases claims filed against local government employees, costs will increase for attorney's fees, damages, and/or insurance or liability coverage costs.

Effective Date

The bill takes effect September 1, 2020, if the General Assembly adjourns on May 6, 2020, as scheduled, and no referendum petition is filed. It applies to civil actions commenced on or after this date.

Departmental Difference

The Department of Law estimates that the bill will require \$383,760 and 2.0 FTE per year beginning in FY 2020-21, which represents 3,600 hours of staff time. This staff will work to represent the state and its employees in cases brought under the bill. In general, fiscal notes do not include appropriations for potential litigation, and only when sufficient data are provided. Instead, the fiscal note assumes that state departments have sufficient legal services budgets to offset the initial impact, and that the annual budget process may be used if caseload necessitates additional staff.

State and Local Government Contacts

Counties
Municipalities
School Districts

Judicial
Personnel
Special Districts

Law
Regulatory Agencies