

Updated to reflect amendments adopted through March 25, 2010.

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *				
	FY 2010-11		FY 2011-12	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See Below		See Below	

*Does not include any impact on political subdivisions. See narrative for political subdivision estimates.

This bill, as amended, would change Nebraska Workers' Compensation Act provisions relating to personal injuries. The Workers' Compensation Act is amended to state that personal injury includes mental injuries and mental illness unaccompanied by physical injury for an employee who is a first responder under conditions as specified in the bill.

This fiscal note is updated to include only the cost and claims experience of first responders in Arkansas and Missouri. Additionally, this updated fiscal note clarifies the estimated impact to the state and the political subdivisions based on further information received by the Legislative Fiscal Office analyst (LFO).

The cost information presented directly below includes both the estimated impact to the state and to political subdivisions: \$7,472 per year total state and local estimated impact. It appears from the cost and claims experience of first responders in Arkansas and Missouri that this information included both state-level first responders, such as the State Patrol, and local-level first responders, such as local police and firefighters. The LFO is not able to separate the state and local impact at this time.

This updated fiscal note provides summary information first, followed by state-specific information, and then the responses of agency and political subdivisions. All numbers are rounded.

Cost and Claims Summary Information

The following summary table uses the cost and claims experience of first responders in Arkansas and Missouri to estimate a cost to Nebraska from this bill (amounts rounded):

Average Cost Per Claim: Arkansas 2006-2009	2,385
Average Cost Per Claim: Missouri 2006-2009	5,627
Average Cost Per Claim: Average of AR + MO	4,006
Estimated claims per year in Nebraska: State and Local	2
Estimated cost per year in Nebraska: State and Local	7,472

For "Estimated claims per year in Nebraska", the LFO calculated this number as follows (amounts rounded):

State	Population as of July 1, 2009	NE population as a percent of AR and MO	Average annual mental only claims for first responders from 2006-2009	Estimated # of mental only claims for first responders adjusted to NE population	Estimated # of mental only claims for first responders in NE. Avg of AR & MO
Arkansas	2,889,450	62%	3	2	
Missouri	5,987,580	30%	7	2	
Nebraska	1,796,619				2

Both of these states are larger than Nebraska. In order to estimate the potential number of claims in Nebraska, Arkansas and Missouri's average number of actual claims was adjusted to a Nebraska estimate based on population.

States with Similar Provisions

Arkansas

Mental only injuries are excluded unless the claimant was a victim of a crime of violence, the condition must be diagnosed by a psychiatrist or psychologist, benefits capped at 26 weeks, death benefits available only if claimant dies from the condition within one year from the DOI. Ark. Code. Ann. § 11-9-113.

LFO has received additional information from the state of Arkansas that contains occupation codes and titles that appear to be first responders, and this information is shown in the following table (amounts rounded):

First Responders Mental Only - AR occupation codes and titles	Amount Paid				Average
	2006	2007	2008	2009	2006-2009
occupation 418 - police and detectives public service	22,314				
occupation 417 - firefighting occupations	0				
occupation 418 - police and detectives public service	0				
occupation 418 - police and detectives public service		0			
occupation 418 - police and detectives public service			1,200		
occupation 418 - police and detectives public service			+		
occupation 418 - police and detectives public service			0		
occupation 418 - police and detectives public service			339		
occupation 418 - police and detectives public service				0	
occupation 416 - fire inspection and fire prevention				0	
Total Cost	22,314	0	1,539	0	5,963
Total Claims	3	1	4	2	3
Average Cost Per Claim	7,438	0	385	0	2,385
+ case is still open but no cost data received.					

Arkansas's law as it applies to first responders is probably narrower than this bill because LB 780 is not limited to crimes.

Missouri

The Missouri statute reads as follows:

Mo. Rev. Stat. § 287.120 (2000):

8. Mental injury resulting from work-related stress does not arise out of and in the course of the employment, unless it is demonstrated that the stress is work related and was extraordinary and unusual. The amount of work stress shall be measured by objective standards and extraordinary and unusual actual events.

9. A mental injury is not considered to arise out of and in the course of the employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer.

10. The ability of a firefighter to receive benefits for psychological stress under section 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

Missouri's law as it applies to first responders appears to be similar to this bill because the Missouri language states that "the stress is work related and was extraordinary and unusual".

The following table uses cost and claims information for first responders from Missouri (amounts rounded):

Total Case Costs for Firefighters, Police Officers and Hospital: All Other Employees					Average
	2006	2007	2008	2009	2006-2009
Averages for the cases that were closed with costs	5,228	6,401	6,112	4,769	5,627
Number of cases that were used in calculating the averages	8	9	10	2	7

Table Notes:

For 2009, Missouri eliminated 4 specific cases that would have greatly inflated the average costs. The stipulations for these cases clearly state the employer and insurance company did not agree this was a valid claim; they disputed the compensability of the claim and were only settling with the employees to close an open case and relieve the employer's trust of any liability. Upon further contact with Missouri, it appears that these cases involved personnel actions, which are exempted under the provisions of this bill.

The National Council on Compensation Insurance, Inc. did an estimate of LB780 and their estimate used information from states with similar provisions to this bill. NCCI manages the nation's largest database of workers compensation insurance information and they also determine the cost of proposed legislation (taken in part from their website).

NCCI's conclusion is as follows:

[NCCI] analyzed five years of losses for first responders' mental injuries and illnesses for states with similar statutory language (Alaska, Colorado, Maine, Missouri, Nevada, New Mexico, Oregon, South Carolina, and Utah). Each of these states had, at most, a negligible amount of benefits paid or expected to be paid (i.e. reported case reserves) for those types of claims.

The analysis above indicates that any increase in Nebraska's overall workers compensation costs would be negligible if LB 780 is enacted. The proposed bill may have a negligible to moderate impact on first responder class codes depending on the interpretation and adjudication of these types of claims.

A copy of the entire NCCI analysis is available from LFO upon request.

Agency Responses

Administrative Services (DAS) estimates that the amended bill will result in 7 claims per year for a total cost of \$388,954 per year. Their response is attached.

LFO notes that the Administrative Services (DAS) estimate of 7 additional claims per year seems high based on the cost and claims experience of first responders in Arkansas and Missouri.

The DAS estimate of \$46,304 per mental only claim seems high based on the cost and claims experience of first responders in Arkansas and Missouri.

DAS states that they will have litigation and expenses of \$92,608 per year. See their response for details. This seems high considering the cost and claims experience of first responders in Arkansas and Missouri.

DAS charges state agencies an assessment to pay for workers' compensation costs. If the costs of this bill are closer to the estimate of DAS rather than the LFO estimate based on the cost and claims experience of first responders in Arkansas and Missouri, then workers' compensation assessments could be adjusted to reflect the additional costs of the DAS estimate.

Workers' compensation payments come from Fund 58920 - Workers' Compensation Claims. The beginning balance in FY2006-07 was \$9.5 million and the ending balance in FY2008-09 was \$22.6 million. Based on the large balance existing in this Fund, if the costs of this bill are closer to the DAS estimate, then there appear to be sufficient funds to cover the additional costs until the assessments can be adjusted.

The Workers' Compensation Court states that there would likely be increased expenditures from the Workers' Compensation Trust Fund due to this bill. Vocational rehabilitation benefit payments are made from this fund if, due to a work related injury, a worker is unable to return to suitable employment for which he or she has previous training or experience. This bill would allow compensation for a new class of injuries (purely mental injuries without a causal connection to a physical injury), a certain percentage of those new cases would qualify for vocational rehabilitation benefits. However, because this type of injury has not been previously compensated under the Workers' Compensation Act, the court has no basis for determining how many of those cases would qualify for these benefits.

The court also states that this bill could result in an increase in workload for the judges and staff in processing cases relating to this new type of injury, although this is impossible to quantify. At this time the court does not anticipate that the additional workload would require an increase in staffing or other substantial court expenditures.

IMPACT ON POLITICAL SUBDIVISIONS: The City of Lincoln estimates that this bill will increase their workers' compensation expenditures by \$130,726 per year. This estimate seems high based on the cost and claims experience of first responders in Arkansas and Missouri.