

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1366-03  
Bill No.: HCS for HB 769  
Subject: Elderly; Health Care; Health, Public  
Type: Original  
Date: April 16, 2007

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Bill Summary: This proposal modifies various provisions regarding protections for vulnerable adults and children.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
General Revenue	(Greater than \$341,146)	(Greater than \$412,810)	(Greater than \$438,143)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Greater than \$341,146)</b>	<b>(Greater than \$412,810)</b>	<b>(Greater than \$438,143)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
State School Moneys Fund*	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*Unknown savings and losses would net to \$0.

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 11 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Federal	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*Income and costs of approximately \$397,144 in FY08, \$515,168 in FY09 & \$556,889 in FY10 would net to \$0.

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
<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>			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
<b>Local Government</b>	<b>Unknown</b>	<b>\$0</b>	<b>\$0</b>

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## **FISCAL ANALYSIS**

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### **ASSUMPTION**

Officials from the **Department of Public Safety, Office of Administration, Missouri State Highway Patrol**, and the **Office of the State Courts Administrator** each assume the proposal would have no fiscal impact on their respective agencies.

In response to a similar proposal from this year (SB 490), officials from the **Office of Prosecution Services** and the **Office of the State Treasurer** each assume the proposal would have no fiscal impact on their respective agencies.

In response to a previous version of this legislation, officials from the **Office of the Attorney General** assume any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Department of Mental Health** assume no additional Department resources should be needed to effectuate this legislation.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

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

Officials from the **Department of Social Services (DSS)** states this proposal is updating various statutory sections to accommodate the transfer of the Division of Aging from DSS to the Department of Health and Senior Services. The proposal also offers certain protections for the elderly. There is no direct fiscal impact to the DSS.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** state several penalty provisions are upgraded in felony status throughout this proposal, mandatory imprisonment is enacted and the crime criteria throughout is also enhanced.

Currently, the DOC cannot predict the number of new or extended commitments which may result from the creation/enhancement of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY06 average of \$39.43 per inmate, per day or an annual cost of \$14,394 per inmate) or through supervision provided by the Board of Probation and Parole (FY06 average of \$2.52 per offender, per day or an annual cost of \$920 per offender).

In summary, supervision by the DOC through incarceration or probation would result in additional costs and although the exact fiscal impact is unknown, it is estimated that potential costs will be in excess of \$100,000 per year.

Officials from the **Department of Elementary and Secondary Education (DESE)** assume there is no state cost to the foundation formula associated with this proposal. Should the new crimes and amendments to current law result in additional fines or penalties, DESE cannot know how much additional money might be collected by local governments or the Department of Revenue to distribute to schools. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to schools increases the deduction in the foundation formula the following year. Therefore, the affected districts will see an equal decrease in the amount of funding received through the formula the following year; unless the affected districts are hold-harmless, in which case the districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to the state of funding the formula.

ASSUMPTION (continued)

For the purpose of this proposed legislation, the **Office of State Public Defender (SPD)** cannot assume existing staff will provide competent, effective representation for any new cases arising where indigent persons are charged with the proposed new crimes violating provisions regarding protections for vulnerable adults and children. This proposed legislation creates new crimes including making it a criminal offense to hire registered sex offenders in certain capacities. It also elevates elder abuse in the 3<sup>rd</sup> degree from Class A Misdemeanor to a Class D Felony.

While the number of new cases may be too few or uncertain to request additional funding for this specific proposal, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all its cases.

**Oversight** assumes the SPD could absorb the additional caseload that may result from this proposal within existing resources. Oversight assumes any significant increase in the workload of the SPD would be reflected in future budget request.

Officials from the **Department of Health and Senior Services (DHSS)** state Section 192.2175 expands the entities who are authorized to access the Employee Disqualification List (EDL), including consumer reporting agencies regulated by the Fair Credit Reporting Act that conducts employee background checks on behalf of entities. If the Department is required to exercise oversight of the consumer reporting agencies to make sure they are in compliance with the statute and only perform background checks on behalf of qualified entities as required in Section 192.2175, DHSS staff would have to process the requests manually by staff rather just giving users access to the system. It is anticipated that the number of consumer reporting agencies that would want to access the EDL information would be significant since these agencies charge their customers to access this information. If the volume of EDL checks increases significantly, the Department would need additional staff to handle the increased workload and be able to process the checks for the consumer reporting agencies. It is unknown how many staff would be necessary or how many additional background checks would be requested. For the purposes of this fiscal note the Department is showing a fiscal impact of \$0 to Unknown with an unknown amount of additional staff needed to implement the provisions in Section 192.2175.

Nurse assessments for consumers directing their own care are necessary to ensure safe care plans guide the delivery of adequate long-term care to individuals choosing to receive care in their home. Currently, the state reimburses semi-annual nurse assessment visits for each client authorized to receive agency delivered care at home. The Consumer Directed Services (CDS) program (Section 208.930, RSMo), transferred from DESE in 2005 did not include a requirement for the medical assessment. Prior to transfer of the program, this component was a requirement of the Centers for Independent Living.

ASSUMPTION (continued)

The addition of the requirement for nurse visits for CDS consumers will ensure consistency between the two programs. Projections for FY08 show 9,698 consumers will be enrolled during the year, based upon observed historical increases of 4.95% annually. At \$39.49/visit, two visits per year would cost \$765,948/year (9,698 consumers X \$39.49/visit X 2 visits/year). Using the blended FMAP for FY08 of 62.22%, the Department estimates \$289,375 GR and \$476,573 in Federal match for the first year.

**Oversight** assumes, because the potential for oversight over consumer reporting agencies is speculative, that the DHSS will not incur significant costs related to Section 192.2175 of this proposal. If a fiscal impact were to result, the DHSS may request additional funding through the appropriations process.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state the US Department of Labor (USDOL) officials have informally notified DOLIR that the proposed language raises an issue with Federal UC law.

The proposed language would modify the disqualification list for certain health care employees as follows: 192.2175.14, "Any employee who is discharged because the employee was placed on the employee disqualification list maintained by the Department of Health and Senior Services under this chapter shall not be eligible for unemployment insurance benefits under section 288.040, RSMo. Any person who is employed in a position for which employment is prohibited while such person is listed on the employee disqualification list shall have his or her placement on the employee disqualification list extended one year."

Federal law limits the circumstances under which an individual may be totally disqualified for benefits. Section 3304(a)(10) of the Federal Unemployment Tax Act (FUTA) provides that—

“compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income;...”.

USDOL has notified DESE that the changes to section 192.2175.14 may not conform with federal law and, as a result, could jeopardize certification of the state's unemployment insurance (UI) program. If the program fails to be certified, Missouri would lose \$36 million in federal funds the state receives to administer the UI program and Missouri employers would lose over \$900 million annually in Federal Unemployment Tax Act (FUTA) credits.

ASSUMPTION (continued)

**Oversight** assumes the loss of federal funds the state received to administer the unemployment insurance program resulting from this proposal is speculative and therefore, have not included the estimate in the fiscal note.

<u>FISCAL IMPACT - State Government</u>	FY 2008 (10 Mo.)	FY 2009	FY 2010
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**GENERAL REVENUE FUND**

Savings

Reduced appropriations to State School Moneys Fund	<u>\$0</u>	<u>Unknown</u>	<u>Unknown</u>
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Costs - Department of Health and Senior  
Services

Nurse Visits	(\$241,146)	(\$312,810)	(\$338,143)
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Costs - Department of Corrections

Incarceration/Probation Costs	<u>(Greater than \$100,000)</u>	<u>(Greater than \$100,000)</u>	<u>(Greater than \$100,000)</u>
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**ESTIMATED NET EFFECT ON  
GENERAL REVENUE FUND\***

<u>(Greater than \$341,146)</u>	<u>(Greater than \$412,810)</u>	<u>(Greater than \$438,143)</u>
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\*Oversight assumes costs will exceed savings.

**STATE SCHOOL MONEYS FUND**

Savings - Reduced distributions to local  
school districts

<u>\$0</u>	<u>Unknown</u>	<u>Unknown</u>
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Losses - Reduced appropriations from  
General Revenue Fund

<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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**ESTIMATED NET EFFECT ON  
STATE SCHOOL MONEYS FUND**

<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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## FEDERAL FUNDS

### Income - Department of Health and Senior Services

Federal Assistance	\$397,144	\$515,168	\$556,889
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### Costs - Department of Health and Senior Services

Nurse Visits	(\$397,144)	(\$515,168)	(\$556,889)
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### ESTIMATED NET EFFECT ON FEDERAL FUNDS

<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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### FISCAL IMPACT - Local Government

FY 2008 (10 Mo.)	FY 2009	FY 2010
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## POLITICAL SUBDIVISIONS

### Revenues - School Districts

Income from fines	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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### Losses - School Districts

Reduced distributions from State School Moneys Fund	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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### ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS

<u>Unknown</u>	<u>\$0</u>	<u>\$0</u>
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### FISCAL IMPACT - Small Business

Providers that are small businesses may be required to conduct supplemental background checks to ensure compliance with the additional disqualifying offenses in this proposal.

If the state's unemployment insurance program fails to be certified, Missouri employers would lose over \$900 million annually in Federal Unemployment Tax Act (FUTA) credits.



## FISCAL DESCRIPTION

This legislation provides protections for vulnerable adults and children and transfers the Division of Aging from the Department of Social Services to the Department of Health and Senior Services. In its main provisions, the legislation adds financial exploitation of the elderly to the public education and awareness program administered by the Department of Health and Senior Services.

The legislation transfers the powers, duties, and functions of the Board of Nursing Home Administrators to the Department.

The legislation defines "consumer," "in-home services," "misappropriation," "personal care attendant," "principal," "patient," "provider," and "resident".

The legislation requires any health service provider or employee and allows any other person having reasonable cause to believe that a patient or consumer has been a victim of misappropriation of a patient's money to report the information to the Department.

The legislation requires the Department, upon receipt of an imminent danger report, to initiate an investigation promptly, but without a 24-hour time requirement. If an investigation indicates a crime has occurred, the appropriate law enforcement agency must be notified. The Department must notify the resident's legal representative of the report and investigation status when it involves a resident who has been appointed a guardian and/or conservator or is incapacitated and resides at a state-licensed facility. The Department may also notify the resident's family members or guardians.

The legislation requires the Department to keep the names of individuals submitting abuse and misappropriation reports confidential unless the complainant agrees to the disclosure of his or her name, the name of the complainant is lawfully subpoenaed, the release of a name is required by the Administrative Hearing Commission, or the release of a name is requested by the Department of Social Services for the purpose of licensure under Chapter 210, RSMo.

The legislation protects a patient and the patient's family members from eviction, harassment, or retaliation due to the filing of a report of a violation or suspected violation of the provisions of the legislation.

The legislation requires patients and consumers whose services are funded by the Missouri Medicaid Program to be checked against the sexual offender registry and requires the Department of Health and Senior Services to notify providers at the time of referral if a patient or consumer is listed.

FISCAL DESCRIPTION (continued)

The legislation makes any person failing to file a required report and any person or provider who misuses or diverts the consumer's use of any personal property or money or falsifies service delivery documents guilty of a class A misdemeanor. Any provider who knowingly conceals abuse or neglect that results in the death or serious injury of a patient will be guilty of a class D felony.

The legislation authorizes the Department to assess a \$1,000 fine on any provider who willfully and knowingly fails to report known abuse by an employee.

The legislation makes any person or entity that unlawfully discloses information from the employee disqualification list guilty of an infraction.

The legislation extends the time a person can be listed on the employee disqualification list by one year if he or she is employed in a prohibited position while on the list.

The legislation requires approved good cause waivers for employees to gain or retain employment from a provider as of August 28, 2008.

The legislation restates the Department's rule-making authority to make any rule effective only if it complies with and is subject to the provisions of Chapter 536.

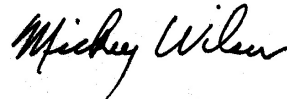
The legislation prohibits state and federal financial assistance to be used for the services of a personal care attendant who is listed on the employee disqualification list, is registered as a sexual offender, or has a disqualifying criminal history not excused by a good cause waiver.

The legislation prohibits courts from suspending the imposition or execution of a sentence, imposing a fine instead of a term of imprisonment for first and second degree elder abuse cases and sexual misconduct cases, and sentencing persons guilty of a crime of violence against an elderly person to less than 30 consecutive days or imposing a fine instead of imprisonment.

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

Office of the Attorney General  
Office of Administration  
Office of the State Courts Administrator  
Department of Elementary and Secondary Education  
Department of Mental Health  
Department of Corrections  
Department of Health and Senior Services  
Department of Social Services  
Department of Public Safety  
Missouri State Highway Patrol  
Office of Prosecution Services  
Office of the Secretary of State  
Office of the State Public Defender  
Department of Labor and Industrial Relations  
Office of the State Treasurer



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