

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3834-01
Bill No.: HB 1516
Subject: Disabilities; Elderly; Health Care; Department of Social Services
Type: Original
Date: March 3, 2008

Bill Summary: This legislation provides protections for senior citizens, disabled persons, and children and transfers the Division of Aging to the Department of Health and Senior Services.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
General Revenue	\$0	Unknown	Unknown
Total Estimated Net Effect on General Revenue Fund	\$0	Unknown	Unknown

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
State School Moneys Fund*	\$0	\$0	\$0
Criminal Records Fund	\$3,234,000	\$501,600	\$501,600
Total Estimated Net Effect on <u>Other</u> State Funds	\$3,234,000	\$501,600	\$501,600

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

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on FTE	0	0	0

☐ 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).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Local Government	Unknown	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

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

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 **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)** assume there is no fiscal impact to the DSS. The Department of Health and Senior Services has primary responsibility for those programs covered by this proposal.

Officials from the **Department of Mental Health (DMH)** state the DMH and its service providers are currently required to perform background checks of prospective employees, including sex offenders. There should be no fiscal impact resulting from this proposal.

Officials from the **Office of the State Public Defender (SPD)** state for purposes of the proposal, the 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 as listed:

ASSUMPTION (continued)

- Adds financial exploitation of the elderly to the categories of behavior constituting elder abuse and neglect; and, if charged as a Class B felony, removes possibility of probation .
- Makes it a Class A misdemeanor for a mandatory reporter of elder abuse to fail to report it; If abuse results in death, the failure to report is a Class D felony;
- It is already a Class A misdemeanor for employers of care providers to hire anyone with disqualifying criminal history. Bill expands the categories of criminal history that disqualify someone from being a care provider and extends that disqualification to home health care and hospice workers; and also makes it a Class to fail to run the required criminal history check on potential care providers before hiring them.
- Eliminates probation or a fine as an option for sentencing in cases of Elder Abuse First Degree and some types of Elder Abuse Second Degree.
- Increases penalty for Elder Abuse Third Degree from Class A misd to a Class D felony
- Increases penalty for sexual contact with resident of nursing home or Alzheimer unit by employee from Class B misd to a Class A misd for a first offense and makes it a Class D for second or subsequent offense.
- Increases penalty for actual intercourse in above situation from a Class A misd to a Class C felony and to a a Class B felony with no probation or parole for second or subsequent offense.
- Imposes minimum sentence of 30 days (no probation) for crime of violence against the elderly
- The Missouri State Public Defender System is currently operating in a crisis mode with caseloads far in excess of any recognized standard.

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 of the SPD 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** assume the changes in section 192.2178 will require hospitals, long-term care facilities, and adult day care providers to obtain background screening information that includes a check of the Department of Mental Health Employee Disqualification Registry.

ASSUMPTION (continued)

Long-term care, adult day care, and hospitals are not required to use the Family Care Safety Registry for background screenings and tend not to do so. DHSS believes the vast majority of the repeat background screenings required by Section 192.2178 will be requested through the Department of Public Safety. DHSS does not anticipate the bill having a fiscal impact on the Division of Regulation and Licensure.

The assumption is made that any increase in revenue to the DPS, Missouri State Highway Patrol will be reflected in the Department of Public Safety's fiscal note response.

Officials from the **Department of Corrections (DOC)** state the proposal includes penalty provision up through a class B felony. The fiscal impact for DOC per year is unknown, less than \$100,000.

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 DOR 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.

Officials from the **Missouri State Highway Patrol** state the following:

According to the Department of Health and Senior Services, the estimated number of persons that are currently employed and will be subject to this new legislation is approximately 228,000. Approximately 100,000 of these 228,000 employees have had background checks performed pursuant to other statutory requirements and will not be part of the initial check process stipulated in this proposed legislation ($228,000 - 100,000 = 128,000$).

Additionally, it is assumed there will be a 10% turnover rate for these healthcare workers; therefore, 22,800 additional background checks will be needed annually. Each background check costs \$20.00 for the state fingerprint check and an additional \$19.25 for the nationwide

federal check. Of which, the state pays the FBI \$17.25.

ASSUMPTION (continued)

Estimated Revenue for FY09:

128,000 healthcare workers x \$39.25 (state/federal background check)	\$ 5,024,000
19,000 (22,800/12 x 10 months) healthcare workers x \$39.25	<u>\$ 745,750</u>
FY09 Revenue Total:	\$ 5,769,750

Estimated Expense for FY09:

128,000 healthcare workers x \$17.25 (federal background check charge)	\$ 2,208,000
19,000 (22,800/12 x 10 months) healthcare workers x \$17.25	<u>\$ 327,750</u>
FY09 Expense Total:	\$ 2,535,750

Estimated Revenue for FY10 & FY11:

22,800 employees x \$39.25	\$ 894,900
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Estimated Expense for FY10 & FY11:

22,800 employees x 17.25	\$ 393,300
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Officials from the **Office of Prosecution Services (OPS)** have not responded to Oversight's request for fiscal information.

<u>FISCAL IMPACT - State Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
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GENERAL REVENUE FUND

Savings - Department of Elementary and
 Secondary Education*

Reduced appropriations to State School Moneys Fund	\$0	Unknown	Unknown
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Costs - Department of Corrections
 Incarceration/Probation Costs*

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

<u>\$0</u>	<u>Unknown</u>	<u>Unknown</u>
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*Oversight assumes savings will exceed costs.

STATE SCHOOL MONEYS FUND

Savings - Department of Elementary and Secondary Education

Reduced distributions to local school districts	\$0	Unknown	Unknown
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Losses - Department of Elementary and Secondary Education

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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CRIMINAL RECORDS FUND

Income - Department of Public

Safety/Missouri State Highway Patrol Revenue from Background Checks	\$5,769,750	\$894,900	\$894,900
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Costs - Department of Public

Safety/Missouri State Highway Patrol Background Checks Costs	<u>(\$2,535,750)</u>	<u>(\$393,300)</u>	<u>(\$393,300)</u>
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ESTIMATED NET EFFECT ON CRIMINAL RECORDS FUND	<u>\$3,234,000</u>	<u>\$501,600</u>	<u>\$501,600</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
POLITICAL SUBDIVISIONS			
<u>Revenues</u> - School Districts			
Income from fines	Unknown	Unknown	Unknown
<u>Losses</u> - School Districts			
Reduced distributions from State School Moneys Fund	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS	<u>Unknown</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Hospitals, long-term care facilities and adult day cares will be required to obtain updated background screenings in order to be in compliance with provisions of Section 192.2178.

FISCAL DESCRIPTION

The proposed legislation changes the laws regarding protections for vulnerable adults and children. Adds reducing the incidents of financial exploitation of the elderly to the public education and awareness program administered by the Department of Health and Senior Services (Section 192.925, RSMo).

This legislation transfers the Division of Aging from the Department of Social Services to the Department of Health and Senior Services (Section 192.2000).

This legislation transfers the powers, duties, and functions of the Board of Nursing Home

Administrators to the Department of Health and Senior Services from the Department of Social Services (Section 192.2000.9).

FISCAL DESCRIPTION (continued)

This legislation revises the definition of "protective services" to mean a service provided by the state or other governmental or private organizations or individuals which are necessary for the eligible adult to meet his or her essential human needs (Section 192.2003).

This legislation grants immunity from civil and criminal liability for any person making a report of abuse or neglect to the Department of Health and Senior Services unless the person acts negligently, recklessly, in bad faith, or with malicious purpose (Sections 192.2103.5 and 192.2150.11).

This legislation defines "consumer," "in-home services," "misappropriation," "personal care attendant," "principal," "patient," "provider," and "resident" relating to abuse and neglect of the elderly, the disabled, and children (Section 192.2150).

This legislation requires any health service provider, health service vendor employee, personal care attendant, or any person having reasonable cause to believe that a patient or consumer has been a victim of misappropriation of a patient's money or property or has falsified documents verifying delivery of health care services must report the information to the Department of Health and Senior Services within 24 hours of discovering the act (Sections 192.2150.2 and 192.2150.3).

This legislation requires the Department of Health and Senior Services, upon receipt of an imminent danger report, to initiate a thorough investigation promptly, but removes the 24-hour time requirement. If an investigation indicates a crime has occurred, the appropriate law enforcement agency and the prosecutor 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 who is incapacitated and resides at a state-licensed facility. The Department may also notify the resident's family members or guardians (Section 192.2150.6 and 192.2150.7).

This legislation requires the Department of Health and Senior Services to keep confidential the names of individuals submitting abuse and misappropriation reports unless the complainant agrees to the disclosure of his or her name; it is necessary to prevent further abuse and neglect,

misappropriation of funds, or document falsification; 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 (Section 192.2150.9).

FISCAL DESCRIPTION (continued)

This legislation requires the Department of Health and Senior Services to add persons who have falsified documents verifying service delivery to consumers or have misappropriated property or moneys belonging to consumers to the employee disqualification list (Section 192.2150.12).

This legislation protects a patient and the patient's family members or an employee from eviction, harassment, or retaliation due to the filing of a report of a violation or suspected violation of the provisions of the legislation (Section 192.2150.13).

This legislation requires potential patients and consumers whose services are funded by the MO HealthNet 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 on the registry (Section 192.2150.15).

This legislation specifies that any person failing to file a required report within the time guidelines and any person or provider who misuses or diverts the consumer's use of any personal property or money or falsifies service delivery documents will be guilty of a class A misdemeanor. Any provider or employee 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 (Sections 192.2153.1 - 192.2153.3).

This legislation authorizes the Department of Health and Senior Services to assess a \$1,000 fine on any provider who willfully and knowingly fails to report known abuse by an employee (Section 192.2153.4).

This legislation specifies that any person or entity who unlawfully discloses information from the employee disqualification list will be guilty of an infraction; and upon request from the Division of Employment Security within the Department of Labor and Industrial Relations, the Department of Social Services must provide copies of employee investigation reports of those on the list. Those persons on the list cannot be paid from public moneys for personal care assistant services (Sections 192.2153.11 - 192.2153.13).

This legislation requires health care providers or employment agencies to inquire to the Department of Health and Senior Services if a full or part-time applicant for employment which involves consumer contact is on the employee disqualification list prior to hiring the applicant (Section 192.2178.3).

FISCAL DESCRIPTION (continued)

This legislation prohibits, as of August 28, 2008, a provider from hiring any person with a disqualifying history unless the person has submitted an approved good cause waiver. Providers cannot continue to employ people who were employed prior to August 28, 2008, with disqualifying backgrounds after March 1, 2009, unless the person submits an approved good cause waiver prior to January 1, 2009. An employer who knowingly hires a person who is a registered sexual offender on or after August 28, 2008, will be guilty of a class A misdemeanor (Sections 192.2178.7 and 192.2178.8).

This legislation specifies that a consumer-directed service consumer or hospice will be guilty of a class A misdemeanor if it does not request a background screening check from the family care safety registry prior to allowing the employee to have contact with an in-home patient (Section 192.2178.9).

This legislation prohibits any state or federal funding for personal care assistance services if the attendant is on the employee disqualification list; is a registered sexual offender; or has a disqualifying criminal history, unless a good cause waiver is obtained (Section 208.909.4).

This legislation defines "related personal care" as care provided for a person with a physical or medical disability by an adult relative as it relates to the Family Care Safety Act (Section 210.900.2).

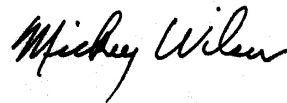
This legislation requires any person responsible for the care of a person 60 years of age or older who has cause to suspect that the person has been abused, neglected, or financially exploited by a person, firm, or corporation to make a report to the Department of Health and Senior Services (Section 565.188.1).

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 Labor and Industrial Relations
Department of Social Services
Department of Public Safety
Missouri State Highway Patrol
Office of the Secretary of State
Office of the State Public Defender

Not Responding: Office of Prosecution Services



Mickey Wilson, CPA
Director
March 3, 2008