

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4725-02
Bill No.: HB 2434
Subject: Children and Minors; Courts; Marriage and Divorce
Type: Original
Date: April 28, 2008

Bill Summary: The proposal modifies the requirements for awarding child support.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
General Revenue	(\$219,326)	(\$231,409)	(\$238,351)
Total Estimated Net Effect on General Revenue Fund	(\$219,326)	(\$231,409)	(\$238,351)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Unemployment Compensation Administration	\$0	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 11 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
General Revenue	4	4	4
Unemployment Compensation Administration	4	4	4
Total Estimated Net Effect on FTE	8	8	8

☒ 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	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Office of the Attorney General (AGO)** assumes the proposal makes the state the party of interest in all child support appeals and makes AGO the legal counsel for the state in those appeals (Section 452.360.6). AGO assumes this proposal will increase appeals handled by their office by approximately 125 cases per year. Based on previous experience with child support appeals, AGO assumes it would need 3 FTE Assistant Attorneys General I (each at 32,500 per year) and 1 FTE Legal Secretary (at \$25,500 per year) to handle the increased case load. AGO estimates the total cost of the proposal to be approximately \$220,000 in FY 09 and approximately \$230,000 in subsequent years.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume Section 452.340.8 indicates the Missouri Supreme Court shall have a rule establishing guidelines by which any award of child support shall be made in any judicial or administrative proceeding. The guidelines shall contain specific, descriptive and numeric criteria which will result in the computation of the support obligation. The guidelines will require documentation to verify the income of the parties for the initial order of support and for any modification of such order. The documentation includes a wage match with DOLIR. Confidentiality requirements per Section 288.250 and 20 CFR Part 603 allow this information to only be released to the individual for whom it pertains, or to his or her attorney. DOLIR will recover the cost to provide this information by charging a fee per inquiry.

The proposed legislation would increase the workload for DOLIR staff. It is assumed the inquiry would be directed toward wage match information and not unemployment insurance claim information. DOLIR would recover the cost incurred to provide this information by charging an inquiry fee to the party making the request. DOLIR receives money to administer the unemployment compensation program from the federal government. The money received is to be used to administer the unemployment compensation program. Costs incurred to provide services not related to unemployment insurance would need to be funded by the use of general revenue funds or a fee to cover the cost incurred to provide the service. Since the wage match verification is not a specific function of administering the unemployment compensation program, DOLIR will be required to charge an inquiry fee to recover the cost incurred. It is assumed the inquiry fee charged by DOLIR to provide information to the requesting party will be deposited into the Unemployment Compensation Administration Fund. The fiscal note will not show a fiscal impact; it is assumed the fee charged will recover the cost incurred.

ASSUMPTION (continued)

The verification would require DOLIR staff to respond to wage match inquiries as well as process the payment associated with the inquiry. DOLIR would require payment in advance per 20 CFR 603.8(d). The number of inquiries that would be generated from this proposed legislation is unknown. Based on the 27,844 divorce filings for state fiscal year 2007, this proposal could increase the additional workload to a minimum of 55,688 inquiries. This would require DOLIR to hire additional employees. DOLIR estimates it would need three additional Claims Examiners at an average annual salary of \$29,460 and one Clerical position at an average annual salary of \$28,548, plus benefits. Additional equipment purchases would include a scanner at an approximate cost of \$26,000 with annual maintenance. It is assumed the scanner purchase will be amortized over a three-year period in the calculation of the inquiry fee. The annual office supplies cost is estimated to be \$300. Assuming 55,688 inquiries with an annual cost of \$176,200, the fee charged per inquiry could be \$3.16 plus the charges DOLIR currently has published and authorized by Regulation 8 CSR 10-2.020.

Oversight assumes the inquiry fee charged by the Department of Labor and Industrial Relations (DOLIR) to the party making the wage verification request will offset any costs incurred by DOLIR.

Officials from the **Department of Social Services – Division of Legal Services (DOS–DLS)** assume the proposed legislation in section 452.340.8 requires documentation to verify the incomes of the parties for the initial order of support and for any modification. Historically, there is a segment of the population for which no income documentation is available, and for this population the proposed legislation does not address that group. This could cause delays in the processing of agency actions as well as hearing delays.

The proposed legislation also states there will be no child support awarded in the joint physical custody cases in which the child spends substantial equal time with both parents and the difference in the verified income of the parents is less than 25%. This could generate additional modification review requests; however, the number is unknown at this time.

The proposed legislation also states any party who falsifies documentation or income is liable to the child for support in an amount that equals the amount of support that would have been awarded plus an additional 25%. This is interpreted to mean 25% of the actual support, but the proposed legislation does not state the length of time for the additional 25%, nor does it state whether or not the courts or the agency will handle these issues. DOS does not have any statutory authority to address this issue.

ASSUMPTION (continued)

The proposed legislation in section 452.340.9 precludes any deviation from the Form 14, which would essentially prevent the parties from agreeing to a different amount. Historically, DOS–DLS entertains, on a routine basis, agreements from parties in modification and establishment cases. The proposed legislation would do away with agreements which could result in having to conduct full contested cases. This would require additional time for the hearing officers to conduct these hearings, which could cause additional delays in holding cases and issuing decisions.

Officials assume there would not be a fiscal impact to DOS–DLS, and DOS–DLS defers to the Family Support Division (FSD) for its fiscal impact analysis, and to the Attorney General’s Office because the proposed legislation states that any appeals would result in the State of Missouri becoming a party of interest to be represented by the Attorney General’s Office in the appellate proceeding.

Officials from the **Department of Social Services – Family Support Division (DOS–FSD)** assume Section 452.340.8 of the proposal adds a requirement that the guidelines established by the Missouri Supreme Court “require documentation to verify the income of the parties for the initial order of support and any modification of such order.” Under the proposed bill, the required “documentation shall include, but not be limited to, current wage stubs, a current W-2 form, statements from the party’s employer, a wage match with the Division of Employment Security, and bank statements.”

When establishing and modifying orders of support, DOS–FSD requests income verification from the parties and uses its statutory authority to otherwise verify income. However, the parties to a child support case do not always provide verification of their income, and in such cases, DOS–FSD is not always able to obtain documentation that verifies a party’s current income. In such situations, DOS–FSD may impute income to a party in a child support proceeding in accordance with the guidelines and state regulations. Although the proposed legislation requires documentation, it does not explicitly prohibit use of imputed income in cases where documentation cannot be obtained. Therefore, DOS–FSD assumes that it would be able to continue imputing income as long as provided for by the guidelines and state regulation.

ASSUMPTION (continued)

As written, the proposed bill could be interpreted to require that all forms of verification listed in the bill be required in all initial and modified orders. The bill does not specify who is to provide or obtain the documentation that verifies income. In Title IV-D child support cases, DOS-FSD staff commonly verify income through employers, review wage data available through employment security and other state and federal agencies, and ask the parties to provide verification of their income. To comply with the proposed changes, DOS-FSD would revise the financial questionnaire sent to the parties to request the additional forms of verification specified in the bill. This change can be made with existing staff.

The proposed bill also does not address the expected course of action when all or none of the specified forms of documentation can be provided by or obtained from a party in a child support proceeding. Since the bill does not explicitly prohibit a support proceeding from continuing in the absence of income verification documentation, DOS-FSD assumes it would be able to proceed in cases where income is otherwise verified or imputed in accordance with the guidelines and state regulation.

The proposed bill adds a provision that “no child support shall be awarded when an award of joint physical custody results in the child or children spending substantially equal time with both parents and the difference in the verified incomes of the parents is less than twenty-five percent.” When providing review and modification services, DOS-FSD would need to investigate the circumstances of the case to determine if existing orders for support would need to be ended in accordance with this proposed change. Because DOS-FSD already investigates the income of the parties and the number of overnight stays with the parties in joint custody situations, DOS-FSD believes it can implement this change with existing staff.

The proposed bill adds a provision that a party who submits false information regarding “his or her income shall be liable to the child for support in” the amount equal to that which would have been awarded based on actual income plus an additional twenty-five percent. This provision has the affect of retroactively modifying a child support obligor’s obligation. Retroactive modifications of child support obligations are prohibited by federal law. Specifically, as a condition of Title IV-D state plan approval, the state must have in effect a law requiring the use of the following procedure:

42 USC, section 666(a)(9):

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due) –

ASSUMPTION (continued)

(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

(B) entitled as a judgment to full faith and credit in such State and in any other State, and

(C) not subject to retroactive modification by such State or by any other State; except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

Because this proposed change is inconsistent with federal law, DOS–FSD would expect a finding by the federal government that Missouri is out of compliance with Title IV-D State Plan requirements. Failure to comply with Title IV-D State Plan requirements will result in a total loss of federal funding including incentives. This amount for federal fiscal year 2007 was approximately \$53 million. Any loss of federal funding would have to be replaced by General Revenue. A federally approved IV-D State Plan is also a requirement to receive the TANF (Temporary Assistance for Needy Families) block grant. So, a disapproved IV-D State Plan could also jeopardize federal TANF funding.

DOS–FSD assumes the proposed changes to Sections 452.340.9, 452.340.10, and 452.370.2 would: provide that the child support amount that results from application of the child support guidelines is conclusive rather than a rebuttable presumption; and eliminate the court and DOS–FSD’s ability to make a finding that application of the guidelines is unjust and inappropriate. These amendments are inconsistent with the requirements of 42 USC, section 667 and 45 CFR 302.56.

Because these proposed changes are inconsistent with federal law and regulation, DOS–FSD would expect a finding by the federal government that Missouri is out of compliance with Title IV-D State Plan requirements. Failure to comply with Title IV-D State Plan requirements will result in a total loss of federal funding including incentives. This amount for federal fiscal year 2007 was approximately \$53 million. Any loss of federal funding would have to be replaced by General Revenue. A federally approved IV-D State Plan is also a requirement to receive the TANF (Temporary Assistance for Needy Families) block grant. So, a disapproved IV-D State Plan could also jeopardize federal TANF funding.

ASSUMPTION (continued)

DOS–FSD officials assume the new provisions in Section 452.360.6 provide that in any appeal from an order issued under chapter 452, “the state of Missouri shall be designated as a party of interest for purposes of defending the lower court’s order of child support, and the Attorney General’s Office shall be the legal counsel for the state in any such appellate proceedings.” This has no fiscal impact for DOS–FSD. However, since the Attorney General’s Office may be representing DOS–FSD in appellate cases resulting from actions brought under chapter 452, this may cause a conflict of interest for the Attorney General’s Office in Title IV-D cases where the Attorney General’s Office is also expected to represent the appealing party.

DOS–FSD officials assume the proposed changes to Section 452.423.4 require that appointments of guardians ad litem be made on a rotational basis and no preference shall be given to any guardian ad litem except as otherwise provided for in this subsection. This amendment has no impact on DOS–FSD.

In summary, officials from DOS–FSD assume the provisions of this legislation will not only result in the loss of \$53 million IV-D funding, but will also result in the loss of TANF funding, which will be significant, but the impact is unknown. Therefore, the impact is unknown but greater than \$53 million.

Oversight assumes the loss of federal funding is speculative and dependent upon other factors. Therefore, Oversight assumes no fiscal impact to the Department of Social Services.

<u>FISCAL IMPACT - State Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
GENERAL REVENUE FUND			
<u>Costs – Office of the Attorney General</u>			
Personal Service	(\$105,146)	(\$129,960)	(\$133,859)
Fringe Benefits	(\$46,496)	(\$57,468)	(\$59,192)
Equipment and Expense	<u>(\$67,684)</u>	<u>(\$43,981)</u>	<u>(\$45,300)</u>
<u>Total Costs – AGO</u>	(\$219,326)	(\$231,409)	(\$238,351)
FTE Change – AGO	4 FTE	4 FTE	4 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$219,326)</u>	<u>(\$231,409)</u>	<u>(\$238,351)</u>
Estimated Net FTE Change for General Revenue Fund	4 FTE	4 FTE	4 FTE

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

**UNEMPLOYMENT
 COMPENSATION
 ADMINISTRATION FUND**

Revenues – Department of Labor and
 Industrial Relations

Fees for wage verification	\$170,341	\$177,470	\$181,900
----------------------------	-----------	-----------	-----------

Costs – Department of Labor and
 Industrial Relations

Personal Service	(\$99,876)	(\$122,847)	(\$125,919)
------------------	------------	-------------	-------------

Fringe Benefits	(\$44,165)	(\$54,323)	(\$55,681)
-----------------	------------	------------	------------

Equipment and Expense	(\$26,300)	(\$300)	(\$300)
-----------------------	------------	---------	---------

<u>Total Costs – DOLIR</u>	<u>(\$170,341)</u>	<u>(\$177,470)</u>	<u>(\$181,900)</u>
----------------------------	--------------------	--------------------	--------------------

FTE Change – DOLIR	4 FTE	4 FTE	4 FTE
--------------------	-------	-------	-------

**ESTIMATED NET EFFECT ON
 UNEMPLOYMENT
 COMPENSATION
 ADMINISTRATION FUND**

<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
-------------------	-------------------	-------------------

Estimated Net FTE Change for
 Unemployment Compensation
 Administration Fund

4 FTE	4 FTE	4 FTE
-------	-------	-------

<u>FISCAL IMPACT - Local Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
---	---------------------	---------	---------

<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
-------------------	-------------------	-------------------

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

The proposed legislation changes the laws regarding child support orders and requires documentation to verify the income of the parties for the initial order of child support and for any modification of the order. Documentation includes, but is not limited to, current wage stubs, a current W-2 form, statements from a party's employer, a wage match with the Division of Employment Security within the Department of Labor and Industrial Relations, and bank statements. No child support will be awarded when the court orders joint physical custody and the difference in the verified incomes of the parents is less than 25%. Any party submitting false documentation of income will be liable for the support that would have been awarded under the guidelines plus an additional 25%.

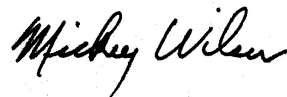
The court is required to follow the Missouri Supreme Court's child support award guidelines without deviation. In any appeal from an order of child support, the State of Missouri will be designated as a party of interest and the Office of the Attorney General will be the legal counsel responsible for arguing in support of the lower court's award of child support.

The court is required to make all appointments of guardians ad litem subject on a rotation basis without preference.

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 State Courts Administrator
Department of Labor and Industrial Relations
Department of Social Services



Mickey Wilson, CPA
Director

L.R. No. 4725-02
Bill No. HB 2434
Page 11 of 11
April 28, 2008

April 28, 2008

BLG:LR:OD (12/06)