

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3111-01
Bill No.: HB 1736
Subject: Business and Commerce; Merchandising Practices; Banks and Financial
Institutions; Social Services, Department of; Elderly; Disabilities
Type: Original
Date: January 17, 2020

Bill Summary: This proposal changes the law regarding the regulation of securities.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Local Government	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Secretary of State (SOS)** assumes 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 \$5,000. 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 require additional resources.

In response to similar legislation (HCS for HB 354) from 2019, officials from the SOS stated in calendar years 2017 and 2018, approximately 3 Respondents were penalized under Section 409.4-412 for a total amount of approximately \$400,000 and approximately 51 Respondents were penalized under Section 409.6-604 for a total amount of approximately \$1,672,000. The money collected is forwarded to the state treasury for the benefit of the county and township school funds in accordance with Article IX, Section 7 of the Missouri Constitution.

The Securities Division does not estimate an increase in the number of penalties imposed, but the penalties themselves would increase, so the gross amount would be higher.

Oversight notes the bill changes the maximum amount of civil penalties that may be assessed and that there may be an increase in the gross amount collected pursuant to Section 409.4-412 and 409.6-604. Without additional information, and since this is a maximum amount possible, Oversight will reflect a zero to unknown amount of additional penalty revenue to school districts.

ASSUMPTION (continued)

Officials from the **Department of Health and Senior Services (DHSS)** assume Section 409.610 requires the DHSS to provide information regarding a qualified adult to the reporting qualified individual or investment advisor representative upon request, subsequent to notifying the department of potential financial exploitation of the qualified adult. DHSS, Division of Senior and Disability Services, Section of Adult Protective Services investigators are responsible for investigating reports of financial exploitation.

An Adult Protective Community Worker II (average salary \$36,170) would be responsible to provide the information requested to the qualified individual. The Special Investigations Unit investigates on average 100 reports of financial exploitation of this nature and anticipates a 20% increase in these types of reports. Providing requested information to the qualified individual is estimated to take 30 minutes per report. Assuming 120 reports ($100 \times 0.20 = 20$; $100 + 20 = 120$), it is estimated providing this information to qualified individuals will take an additional 60 hours, or 0.03 FTE ($60 \text{ hours} \div 2,080 \text{ hours per year} = 0.03$) for total personal service cost of \$904.25 ($\$36,170 \times 0.03 \times 10/12$) for FY21 and \$1,085.10 ($\$36,170 \times 0.03$) in subsequent years.

The department anticipates being able to absorb the costs of the Adult Protective Community Worker. However, until the FY21 budget is final, the department cannot identify specific funding sources.

Section 409.615.3(3) permits the holding of disbursement or transaction for the account of a qualified adult to be extended by the Director of DHSS, after notifying the commissioner of securities. With this proposed legislative change, the DHSS would continue to work closely with Secretary of State, Securities Commissioner. If, during our investigation it is determined an extension is needed due to additional time is required for investigation and/or additional time is required for medical assessment and court proceedings when the qualified adult's capacity is in question, then DHSS would either continue with investigation and/or the Office of General Counsel would be responsible for guardianship/conservatorship petition through Probate Court when the department has exhausted alternative arrangements.

The further investigation would be the responsibility of the Adult Protective Community Worker and as described in prior section, the department anticipates being able to absorb the costs. However, the responsibility of Office of General Counsel attorneys to petition and participate in probate court hearings is anticipated to be absorbed by the department.

ASSUMPTION (continued)

Also, within this subsection, DHSS would be responsible for conducting reviews of circumstances every thirty days to determine if the order extension should remain in effect. This would be the responsibility of the Adult Protective Community Worker and as described in prior section, the department anticipates being able to absorb the costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

Oversight does not have any information to the contrary. Oversight assumes that DHSS will be able to handle any potential increase of workload with existing staff and resources.

Oversight notes that the Department of Social Services, Office of State Courts Administrator, Department of Commerce & Insurance, and Office of Administration have each stated the proposal would not have a direct fiscal impact on their respective organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
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SCHOOL DISTRICTS

<u>Income - potential increase in penalties</u> §409.4-412 & §409.6-604	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
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ESTIMATED NET EFFECT TO THE SCHOOL DISTRICTS \$0 to Unknown \$0 to Unknown \$0 to Unknown

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This bill adds broker-dealers and investment advisors (or investment advisor representatives) to the individuals covered under the Senior Savings Protection Act. Broker-dealers and investment advisors may notify the Department of Health and Senior Services, the Commissioner of Securities, or an immediate family member of his or her reasonable belief that financial exploitation of an vulnerable person has occurred or is being attempted. The department or Commissioner may provide information on the vulnerable person to the reporting individual upon request.

In the instance of a reasonable belief of financial exploitation, the bill allows a broker-dealer, investment advisor, or associated person to refuse a transaction from the account of the vulnerable person for a maximum of 10 business days. To refuse a transaction or disbursement, the broker-dealer, investment advisor, or associated person must send written notice to the vulnerable person, along with contact information for the Investor Protection Hotline. Following the refusal of a transaction or disbursement, the Commissioner or department may enter an order to extend the refusal for the time necessary to protect the vulnerable person, but the agency issuing the order must review the circumstances every 30 days.

The bill specifies a broker-dealer or investment advisor who complies with the Senior Savings Protection Act will be immune to civil liability.

A broker-dealer or investment advisor must provide access to records relevant to the suspected financial exploitation to the department, the Commissioner, or law enforcement.

The Commissioner must update their training website to include resources to assist broker-dealers and investment advisors in the prevention and detection of financial exploitation.

The bill allows a rule to be adopted to require a notice filing by an issuer to include a:

- (1) Copy of the Form 1-A or other forms required by the Securities and Exchange Commission;
- (2) Consent of service of process and a payment of a fee of \$100; and
- (3) Payment of \$50 fee for any late filing.

FISCAL DESCRIPTION (continued)

This bill raises the maximum civil penalty under the Senior Savings Protection Act from \$5,000 to \$25,000 for each violation. The bill also raises the maximum penalty after a hearing from \$1,000 to \$25,000 for each violation and the penalty for a finding of a violation against an elderly or disabled person from \$5,000 to \$15,000 for each violation.

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 Secretary of State
Department of Health and Senior Services
Department of Social Services
Office of State Courts Administrator
Department of Commerce & Insurance
Office of Administration



Julie Morff
Director
January 17, 2020



Ross Strope
Assistant Director
January 17, 2020