

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1261H.01I  
Bill No.: HB 489  
Subject: Education, Higher; Health Care; Boards, Commissions, Committees, and  
Councils; Professional Registration and Licensing  
Type: Original  
Date: March 3, 2023

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Bill Summary: This proposal creates provisions relating to health care.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0 to (Unknown)*</b>	<b>\$0 to (Unknown)*</b>	<b>\$0 to (Unknown)*</b>

\*Oversight assumes the loss to be less than \$250,000 annually.

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
Other State	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
LEF*	\$0	\$0	\$0
Colleges and Universities	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>

\*Indicates numbers net to \$0.

Numbers within parentheses: () indicate costs or losses.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
Federal	\$0 to (Unknown, potentially significant)	\$0 to (Unknown, potentially significant)	\$0 to (Unknown, potentially significant)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 to (Unknown, potentially significant)</b>	<b>\$0 to (Unknown, potentially significant)</b>	<b>\$0 to (Unknown, potentially significant)</b>

\*Oversight notes DMH's assumption of loss of federal funding for non-compliance with DEI provisions and the resulting loss of facilities' accreditations could be significant; DMH noted a possible maximum loss of \$2.2 billion annually.

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

☐ Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
<b>Local Government</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>

## **FISCAL ANALYSIS**

### **ASSUMPTION**

#### **§§191.1770 through 191.1810 – Do No Harm Act**

Officials from the **Department of Mental Health (DMH)** state the proposed legislation establishes the “Do No Harm Act” under sections 191.1770 to 191.1810.

Section 191.1775(3) defines "health care provider" as "any public hospital or public health care provider including, but not limited to, physicians' offices, outpatient clinics, medical testing sites, medical laboratories, physical or occupational therapy or rehabilitation providers, chiropractors, dentists, optometrists, mental health and clinical social workers, and related providers".

Section 191.1795 prohibits health care providers and medical institutions of higher education from adopting or imposing any type of diversity-equity-inclusion (DEI) training, education, material or program as a condition of obtaining or renewing licensing.

Section 191.1800 would require any state entity applying for a federal health care grant related to DEI to publish materials on their website and submit copies to the state board of registration for the healing arts and to the legislative committees on health policy. The Department of Mental Health (DMH) inpatient facilities are accredited by The Joint Commission (TJC) and Center for Medicare/Medicaid Services (CMS). TJC and CMS set several standards that facilities are required to meet for accreditation; cultural competency is included in seven areas of TJC Standards and in three areas of CMS hospital Conditions of Participation. Loss of accreditation by DMH facilities would result in the loss of federal funding. The fiscal impact may include the loss of federal funding estimated to be \$0 - \$2.2 billion.

Additionally, DMH offers training for various clinical disciplines. Various regulatory bodies oversee the training of these clinicians and specify the need to incorporate cultural competency. For example, the Accreditation Council for Graduate Medical Education (ACGME) has recognized cultural competency as a part of three out of six core competencies (patient care, interpersonal and communication skills and professionalism) that residency training programs are to provide training in. Loss of training sites would lead to further shortages in clinical disciplines and it may cause a safety issue to individuals in DMH care if at the last minute there are providers DMH can no longer contract with. This may cause an unknown impact to the department.

**Oversight** does not have any information to the contrary. Oversight has no information on the amount of federal funding that could potentially be lost. In addition, Oversight has no information relating to the likelihood of a loss of training sites that could be used by DMH if they offer DEI training. Therefore, Oversight will reflect \$0 to Unknown costs to General

Revenue (assumed to be less than \$250,000 annually) and a \$0 to Unknown, potentially significant, loss in Federal funds for this agency.

Officials from the **Office of Administration (OA)** state provisions of §191.1802 have the potential to increase costs to the state Legal Expense Fund (LEF) for actions alleging violation of this provision against a state employee in connection with their official duties on behalf of the state or against another person covered by the LEF, due to the addition of an enforceable right under this section. This provision also waives sovereign immunity. This change will be subject to judicial construction; therefore, the cost impact to the state is unknown.

The state self-assumes its own liability under the LEF, §105.711 RSMo. It is a self-funding mechanism whereby funds are made available for the payment of any claim or judgment rendered against the state in regard to the waivers of sovereign immunity or against employees and specified individuals. Investigation, defense, negotiation or settlement of such claims is provided by the Office of the Attorney General. Payment is made by the Commissioner of Administration with the approval of the Attorney General.

Because this bill creates a possible new cause of action, **Oversight** will show a net \$0 direct fiscal impact for the LEF, and a possible \$0 to (unknown) fiscal impact to General Revenue and other state funds. Oversight notes this possible litigation exposure as described by OA could also apply to colleges and universities, federal funds, as well as local political subdivisions.

Officials from the **University of Central Missouri** state this proposal will have an indeterminate fiscal impact on their organization.

**Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a \$0 to unknown cost for colleges and universities for fiscal note purposes.

Officials from the **Office of Attorney General (AGO)** assume any potential litigation costs arising from this proposal can be absorbed with existing resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

**Oversight** does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

**Oversight** notes provisions in §191.1805.3 provide that the AGO may seek civil penalties up to \$1 million for violations. In addition, it is thought since these penalties would be for a violation of civil law rather than criminal law, the penalties would not be distributed to school districts. Oversight assumes any civil penalties collected by the AGO would be deposited in the General Revenue Fund. Since it is unknown whether any penalties will be collected, Oversight will range the penalties from \$0 to Unknown.

Officials from the **Missouri House of Representatives (MHR)** state the proposal will have no impact, assuming the General Assembly will be in session when it needs to act.

**Oversight** does not have any information to the contrary. Oversight assumes the MHR will have no fiscal impact based on their assumption.

Officials from the **Department of Commerce and Insurance**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education and Workforce Development**, the **Department of Health and Senior Services**, the **Department of Social Services**, **Northwest Missouri State University**, **St. Charles Community College**, the **Office of the Governor**, the **Missouri Senate**, the **Missouri Office of Prosecution Services** and the **Office of the State Courts Administrator** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

#### Rule Promulgation

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** note 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 its 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** only reflects the responses received from state agencies and political subdivisions; however, other colleges and universities were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System (MOLIS) database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
<b>GENERAL REVENUE FUND</b>			
<u>Income</u> – AGO (§191.1805) – civil penalties collected p.4	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Costs</u> – DMH – loss of training sites (§191.1795) p.3	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Cost Increase</u> – OA (§191.1802) – Potential increase in transfer to LEF p.4	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 to (Unknown)</u></b>
<b>OTHER STATE FUNDS</b>			
<u>Cost Increase</u> – OA (§191.1802) – Potential increase in transfer to LEF p.4	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 to (Unknown)</u></b>
<b>LEGAL EXPENSE FUND (0692)</b>			
<u>Transfer-in</u> – Increase in appropriation from General Revenue (§191.1802) p.4	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Cost Increase</u> – OA (§191.1802) – Potential increase in transfer to LEF p.4	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>ESTIMATED NET EFFECT ON THE LEGAL EXPENSE FUND</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

<u>FISCAL IMPACT – State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
<b>COLLEGES AND UNIVERSITIES</b>			
<u>Cost Increase – Increase in LEF payouts (§191.1802) p.4</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
<b>ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES</b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 to (Unknown)</u></b>
<b>FEDERAL FUNDS</b>			
<u>Loss – DMH (§191.1800) – Reduction in federal funds for loss of accreditation p.3-4</u>	<u>\$0 to (Unknown, potentially significant)</u>	<u>\$0 to (Unknown, potentially significant)</u>	<u>\$0 to (Unknown, potentially significant)</u>
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>\$0 to (Unknown, potentially significant)</u></b>	<b><u>\$0 to (Unknown, potentially significant)</u></b>	<b><u>\$0 to (Unknown, potentially significant)</u></b>

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
<b>LOCAL GOVERNMENTS</b>			
<u>Cost Increase – Increase in legal payouts (§191.1802) p.4</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
<b>ESTIMATE NET EFFECT ON LOCAL GOVERNMENTS</b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 to (Unknown)</u></b>

### FISCAL IMPACT – Small Business

This proposal could directly impact small business health care providers. (§§191.1770 to 191.1810)

### FISCAL DESCRIPTION

This bill establishes the "Do No Harm Act" and provides terms and definitions relating to "academic standards", "health care related academic programs", "medical institutions of higher education" and "Diversity-Equity-Inclusion" or "DEI" among others.

**CERTIFICATION AND TRANSPARENCY (Section 191.1780)** The bill requires medical institutions of higher education to submit an annual certification by December 31st to the State Board of Registration for Healing Arts, within the Department of Commerce and Insurance, and the coordinating Board of Higher Education, within the Department of Higher Education, that the institution does not require applicants or students to subscribe to DEI ideologies. This bill requires medical institutions of higher education to publish titles and syllabi for all mandatory courses, seminars, classes and trainings on a public online database, and prohibits institutions from conducting DEI audits or hiring DEI consultants.

**ASSESSMENTS AND STANDARDS (Section 191.1785)** The bill requires medical institutions of higher education to require applicants to complete a standardized admissions test and outlines academic standards for health care related courses of study, as specified in the bill. If a medical institution of higher education wants to alter the standards for admissions, the new standards must be submitted to either chamber of the General Assembly and shall not be effective until at least 60 days have passed during which a joint resolution of disapproval may be passed by both chambers and approved by the Governor to invalidate any such submitted standards.

**HEALTH CARE-RELATED DEI PROVISIONS (191.1790-191.1810)** The bill restricts health care-related professional licensing boards from any having any requirements for obtaining or renewing licenses be associated with DEI related materials or programs. State-required health care-related professional certifications shall not use DEI material or require DEI training as part of the certification process. Such boards and organizations are prohibited from conducting DEI audits or hiring DEI consultants.

Health care providers and medical institutions of higher education are prohibited from receiving state contracts or grants without certifying that the provider or institution will not require specified individuals from subscribing to, studying, or receiving instruction on DEI material. Such providers and institutions must submit annual certification attesting to their compliance. All state entities applying for any federal health care related grant relating to DEI shall publish on a public website all materials, requirements, and instructions relating to the grant application along with a copy of the grant proposal to the State Board of Registration for the Healing Arts and to the members of the House and Senate Committees on Health Policy.



The bill provides any aggrieved person a cause of action for any violations of these sections to include declaratory and injunctive relief, damages of at least \$100,000 against the health care provider or medical institution of higher education for any violations, compensatory damages, and costs and attorney fees. Further the bill waives sovereign immunity for such providers and institutions for up to a year after any violation.

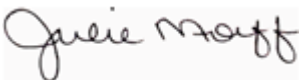
The bill requires health care providers with more than 50 employees or any medical institution of higher education to annually submit certification of compliance to the State Board of Registration for the Healing Arts with Sections 191.1770 to 191.1810, RSMo, and authorizes the Attorney General to investigate allegations of violations. In addition to any relief granted under a private right to action, the Attorney General may seek civil penalties up to \$1,000,000 against a health care provider or medical institution of higher education for each violation of sections 191.1770 to 191.1810.

The State Board of Registration for the Healing Arts shall publish on its website annually a list of all the health care providers and medical institutions that have provided annual certification.

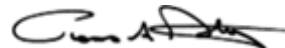
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office  
Department of Commerce and Insurance  
Department of Elementary and Secondary Education  
Department of Higher Education and Workforce Development  
Department of Health and Senior Services  
Department of Mental Health  
Department of Social Services  
Office of Administration  
Office of the Secretary of State  
Northwest Missouri State University  
University of Central Missouri  
St. Charles Community College  
Office of the Governor  
Missouri House of Representatives  
Joint Committee on Administrative Rules  
Missouri Senate  
Missouri Office of Prosecution Services  
Office of the State Courts Administrator



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