

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0099-03
Bill No.: SB 32
Subject: Business and Commerce; Municipalities; Alcohol; Crimes and Punishment;
 Planning and Zoning; Motels and Hotels; Licenses; Taxation and Revenue.
Type: Original
Date: January 21, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	(\$335,476)	(\$200,536)	(\$205,562)
Total Estimated Net Effect on General Revenue Fund	(\$335,476)	(\$200,536)	(\$205,562)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
State School Moneys	\$0	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds *	\$0	\$0	\$0

* \$0 net effect of income and distributions - each estimated to exceed \$100,000 each year.

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	Unknown	Unknown	Unknown

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Public Safety - Divisions of Alcohol and Tobacco Control, State Water Patrol** and the **State Highway Patrol** each assume the proposal will not fiscally impact their respective agencies.

Officials from the **Office of the State Courts Administrator (CTS)** state the proposal would regulate sexually oriented businesses and create several new related crimes. CTS assumes, depending on the degree of enforcement, there may be an increase in the number of cases filed in some courts. However, CTS would not expect a significant fiscal impact on the judiciary.

Officials from the **Office of Prosecution Services** assumes the proposal will not have a significant direct fiscal impact on county prosecutors.

Officials from the **Office of the State Public Defender (SPD)** assumes that existing staff could provide representation for those few cases arising where indigent persons were charged with renting a sleeping room two or more times in 10 hours, or acting as an escort if they are less than 21 years of age, or posing nude or semi-nude if they are less than 21 years of age or lap dancing or placing money in a G-string or dancing without the proper stage.

ASSUMPTION (continued)

The SPD states that passage of more than one bill increasing penalties on existing crimes or creating new crimes would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing indigent persons accused in the now more serious cases or in the new additional cases.

Officials from the **Office of the Attorney General** assume any additional civil actions authorized by this legislation could be absorbed with existing resources.

Officials from the **Office of Secretary of State (SOS)** assume there would be costs due to additional publishing duties related to the Department of Revenue's authority to promulgate rules, regulations, and forms. SOS estimates the department could require approximately 8 new pages of regulations in the Code of State Regulations at a cost of \$27.00 per page, and 12 new pages in the Missouri Register at a cost of \$23.00 per page. Costs due to this proposal are estimated to be \$492, however, the actual fiscal impact would be dependent upon the actual rule-making authority and may be more or less. Financial impact in subsequent fiscal years would depend entirely on the number, length, and frequency of the rules filed, amended, rescinded, or withdrawn. SOS does not anticipate the need for additional staff as a result of this proposal, however, the enactment of more than one similar proposal may, in the aggregate, necessitate additional staff.

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 Elementary and Secondary Education (DES)** assume this proposal will result in increased revenues to the State School Moneys Fund resulting from the admission tax of \$5 for each person entering a sexually oriented business, as well as, from the twenty percent tax imposed on the adjusted gross receipts received from a sexually oriented business. However, DES cannot estimate the potential number of persons entering a sexually oriented business, nor can DES determine the amount of adjusted gross receipts generated by such businesses. Therefore, DES cannot determine the fiscal impact of the proposed legislation. However, DES assumes the revenues will exceed \$100,000.

DES states there is no cost to the foundation formula associated with this bill. DES does not know how much additional fine money might be collected by the Department of Revenue to distribute to schools. Any increase in this money distributed to schools becomes a deduction in the foundation formula the following year. Therefore, the affected districts will see an equal

ASSUMPTION (continued)

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 with a proration factor of 1.0.

Oversight assumes that the revenue generated by Section 67.2542 will be distributed to local school districts in the same year, and will not be calculated as a deduction in the following year.

Officials from the **Department of Corrections (DOC)** state that they could not predict the number of new commitments which could result from the creation of the offense(s) outlined in the proposal. An increase in commitments would depend on the utilization of prosecutors and the actual sentences imposed by the courts. If additional persons were sentenced to the custody of the DOC due to the provisions of this legislation, the DOC would incur a corresponding increase in operational costs either through incarceration or through supervision provided by the Board of Probation and Parole. Supervision by the DOC through probation or incarceration would result in some additional costs, but DOC officials assume that the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Department of Revenue (DOR)** state this legislation places regulations on sexually oriented businesses. It requires these businesses charge a \$5 admissions fee per person, to be submitted to DOR who will collect and administer this fee. This legislation also requires DOR to collect and administer an additional 20% tax the businesses are required to apply against their adjusted gross receipts. It will have a significant fiscal impact on the Division of Taxation as follows:

- Section 67.2542.1 - Requires a sexually oriented business to collect an admissions fee of five dollars to be collected and administered by the Division of Taxation. This fee must be handled as an excise tax, creating the need for PC based program resulting in a cost of \$46,170 (1384 hours). This would also create the need for additional personnel (1/2 FTE - Office Support Assistant/Clerical for mail extraction and 1 Tax Processing Tech. I for tracking and maintaining the new excise tax system).
- Section 67.2542.2 - Requires a sexually oriented business to collect an additional 20 % tax on its adjusted gross receipts, to be collected and administered by the Division of Taxation. This fee will be handled as an item tax creating the need for MITS programming (2,768 hours) resulting in a cost of \$92,340, as well as, additional personnel

ASSUMPTION (continued)

(3 Tax Processing Tech. I - 1 for Error Corrections/34,000 errors generated, 1 for Pre-Edit/184,000 returns impacted, and 1 for Data Entry/170,000 returns impacted).

- The combination of the fee and additional tax will also create the need for additional personnel for our delinquent/collections phone line (1 Tax Collection Tech. I for every 15,000 calls), as well as, the need for Taxpayer Services Representatives in the field offices covering the specified areas (Kansas City, St. Louis County, Columbia, and Springfield).

DOR assumes the proposal would result in the need for 9.5 additional FTE. DOR's cost estimate for the additional FTE plus programming expenses is \$517,897 in FY 2006, \$357,198 in FY 2007 and \$366,153 in FY 2008.

Oversight assumes the number of entities that will qualify as sexually oriented businesses will not be large enough to require DOR to add the additional ½ FTE Office Support Assistant/Clerical for mail extraction. Oversight also assumes DOR will not require the additional 3 FTE Tax Processing Tech I's for error corrections (for every 34,000 errors generated), pre-edit (for every 184,000 returns) and for data entry (for every 170,000 returns). Oversight also assumes DOR will not require the additional FTE Tax Collection Tech I (for every 15,000 calls). Oversight will also assume the four additional FTE Taxpayer Service Reps. will not require additional floor space at their respective DOR field offices. If Oversight is incorrect in its assumptions, DOR can request the additional FTE through the normal budgetary process.

Oversight could find no empirical basis for estimating the amount of revenue the State School Moneys Fund would receive from the \$5 admission fee and the 20 percent adjusted gross receipts tax, as imposed in Section 67.2542. Therefore, Oversight assumes a positive unknown amount of income (over \$100,000) into the fund.

Officials from the **City of Kansas City, City of St. Louis, City of Columbia, Johnson County, Pulaski County** and **Greene County** did not respond to our request for fiscal impact.

This proposal would increase Total State Revenues.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
GENERAL REVENUE			
<u>Costs - Department of Revenue (DOR)</u>			
Personal Service (5 FTE)	(\$112,832)	(\$138,783)	(\$142,253)
Fringe Benefits	(\$48,134)	(\$59,205)	(\$60,685)
Expense and Equipment	(\$36,000)	(\$2,548)	(\$2,624)
Programming	<u>(\$138,510)</u>	\$0	\$0
<u>Total Costs - DOR</u>	<u>(\$335,476)</u>	<u>(\$200,536)</u>	<u>(\$205,562)</u>
ESTIMATED NET EFFECT TO GENERAL REVENUE	<u>(\$335,476)</u>	<u>(\$200,536)</u>	<u>(\$205,562)</u>
 STATE SCHOOL MONEYS FUND			
<u>Income - to the Department of Revenue</u>			
Admission tax of \$5 per person entering a sexually oriented business (67.2542 .1)	Unknown	Unknown	Unknown
 <u>Income - to the Department of Revenue</u>			
Adjusted Gross Receipts tax of 20% from sexually oriented businesses (67.2542 .2)	Unknown	Unknown	Unknown
 <u>Cost - distributions to the local school districts</u>			
	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT TO THE STATE SCHOOL MONEYS FUND *	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

*** Oversight assumes over \$100,000 of revenue will be generated and distributed to local school districts annually.**

<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
---	---------------------	---------	---------

LOCAL SCHOOL DISTRICTS

<u>Income</u> - Additional moneys transferred from State School Moneys Fund from Section 67.2542	Unknown	Unknown	Unknown
--	---------	---------	---------

COUNTIES AND CITIES

<u>Income</u> - license fee for sexually oriented businesses from Section 67.2554	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
---	-----------------------	-----------------------	-----------------------

ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
---	-----------------------	-----------------------	-----------------------

FISCAL IMPACT - Small Business

Small businesses that are considered Sexually Oriented Businesses would be fiscally impacted by various aspects of this proposal.

DESCRIPTION

This proposal regulates sexually oriented businesses.

SECTION 64.2540 - defines numerous terms associated with sexually oriented businesses. The term "sexually oriented business" includes adult arcades, adult bookstores, adult novelty stores, adult video stores, adult cabarets, adult motels, adult motion picture theaters, adult theaters, escort agencies, nude model studios, and sexual encounter centers. An employee of a sexually oriented business must be 21 years of age as well as the person applying for the business's license.

SECTION 67.2542 - requires sexually oriented businesses to pay a \$5 admission tax for each person entering a sexually oriented business. The businesses shall pay the tax to the Department of Revenue and the money will be deposited into the "State Schools Money Fund".

DESCRIPTION (continued)

This section also creates an adjusted gross receipts tax at a rate of twenty percent for all sexually oriented businesses. The taxes will be returned to the Department of Revenue and deposited into the state treasury to the credit of the state schools moneys fund.

SECTION 67.2544 - states that evidence of a sleeping room in a hotel or motel being rented two or more times in a period of less than 10 hours creates a rebuttable presumption that the establishment is an "adult motel".

A person in control of a room at a motel without a sexually oriented license who rents or subrents the room to a person, and within 10 hours from the time the room is rented, he or she rents the same room again, is guilty of a class A misdemeanor.

SECTION 67.2546 - prohibits the exhibition of sexually explicit films, videos, DVDs, and live entertainment in viewing rooms at sexually oriented businesses. A person who violates this provision is guilty of a Class A misdemeanor.

If a sexually oriented business allows specified criminal activity or specified sexual activity on the premises or otherwise fails to comply with these requirements, it shall be considered a nuisance and closed pursuant to Section 567.080, RSMo.

SECTION 67.2548 - prohibits anyone under the age of 21 from being employed by an escort agency. Any person who acts as an escort or agrees to do so for any person under the age of 21 is guilty of a Class A misdemeanor.

SECTION 67.2550 - prohibits anyone under the age of 21 from being employed by a nude model studio. A person under the age of 18 who appears nude or semi-nude at a nude model studio shall be adjudicated for an offense that would be a class A misdemeanor if he or she was an adult. It is a defense to adjudication if the individual is under the age of 16 and thus presumed to be unable to consent to participating in nude modeling. A person over the age of 18 and under the age of 21 shall be guilty of a Class A misdemeanor for such offense.

A person is guilty of a Class A misdemeanor if he or she appears nude or allows someone else to appear nude in an area at a nude model studio that can be viewed from a public right.

A nude modeling studio cannot place a bed, sofa, or mattress in a room, except for placing a sofa in the reception area.

DESCRIPTION (continued)

SECTION 67.2552 - It is a Class A misdemeanor for a person to knowingly and intentionally appear nude or depict, perform, or simulate specified sexual activities in a sexually oriented business. This section also makes it a Class A misdemeanor for a person to knowingly or intentionally appear semi-nude unless the person is an employee who remains a specified distance away from the patrons and behind a railing.

It is a Class A misdemeanor for an employee, while semi-nude in a business, to solicit any pay or gratuity from a customer or for a customer to pay an employee while he or she is in a semi-nude state.

It is a Class A misdemeanor for an employee, while in a semi-nude state, to touch a customer or for a person to knowingly allow a person under 21 on the premises except for those on the premises for maintenance, repair work, or delivery of items.

This section prohibits a sexually oriented business from being open between the hours of 10 p.m. and 10 a.m. on weekdays and Saturdays. These businesses will be closed on state holidays and Sundays.

SECTION 67.2554 - allows any county, city, town or village to create an ordinance requiring sexually oriented businesses to be licensed. Any applicant for such a license must provide certain information on the application including personal description information, present contact information, and proof of age. A license shall not be issued to any person who has had a sexual offense, obscenity offense, or alcohol-related offense conviction during the past five years.

SECTION 67.2556 - allows any county, city, town or village to have zoning power to regulate the location of sexually oriented businesses.

This section also explains that the purpose of this legislation is to protect public policy interests such as mitigating the adverse secondary effects of sexually oriented businesses, limiting harm to minors, and reduction of crime.

SECTION 311.488 - prohibits the Supervisor of the Division of Alcohol and Tobacco Control from issuing a liquor license to a sexually oriented business.

SECTION 567.080 - states that any room, building or other structure regularly used for lewdness and assignation purposes is a public nuisance. Currently, only those places where prostitution is conducted are considered public nuisances.

DESCRIPTION (continued)

Under this section, any person who establishes, maintains, uses, owns, or leases a place for lewdness, assignation, or prostitution is guilty of maintaining a nuisance. If convicted, a person will be by a fine of not more than \$1,000 and/or a short jail sentence.

An action to enjoin such a nuisance may be brought if a lessee, sublessee employee or agent of the owner, assignee, or partner of the owner, knew the nuisance was being maintained. Currently, the law provides for such an injunction only if the owner knows of such activity.

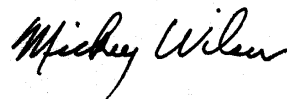
SECTION 573.503 - makes it a Class B misdemeanor for an adult cabaret employee to not complete a background check if required to do so by an order or ordinance. Currently, this section allows counties and St. Louis City to create an order or ordinance requiring employees of adult cabarets to complete background checks but there is no penalty for failing to do so.

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

Department of Revenue
Department of Elementary and Secondary Education
Office of the Secretary of State
Department of Public Safety
Office of the State Courts Administrator
Office of Prosecution Services
Office of the State Public Defender
Department of Corrections
Office of the Attorney General

NOT RESPONDING: City of Kansas City, City of St. Louis, City of Columbia, Johnson County, Pulaski County and Greene County



L.R. No. 0099-03
Bill No. SB 32
Page 11 of 11
January 21, 2005

Mickey Wilson, CPA
Director
January 21, 2005

RS:LR:OD (12/02)