

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0385-02
Bill No.: Perfected HCS for HB's 46 & 434
Subject: Abortion; Physicians; Medical Procedures and Personnel
Type: Original
Date: March 9, 2009

Bill Summary: This legislation changes the laws regarding the consent requirements for obtaining an abortion and creates the crime of coercing an abortion.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	(Could exceed \$891,264)	(Could exceed \$1,047,063)	(Could exceed \$1,072,476)
Total Estimated Net Effect on General Revenue Fund	(Could exceed \$891,264)	(Could exceed \$1,047,063)	(Could exceed \$1,072,476)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
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 2010	FY 2011	FY 2012
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
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 2010	FY 2011	FY 2012
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** and the **Office of Administration-Administrative Hearing Commission** each assume the proposal would have no fiscal impact on their respective agencies.

In response to a similar proposal from this year (HB 434), officials from the **Missouri State Highway Patrol** and the **Department of Public Safety** each assume the proposal would have no fiscal impact on their respective agencies

In response to a previous version of this proposal, 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 **Office of the Attorney General (AGO)** state the costs of implementing the proposal could be absorbed with existing resources. However, AGO assumes that because this proposal has the potential to be the subject of state and federal litigation, potential costs are unknown.

Oversight assumes, because the potential for litigation is speculative, that the AGO will not incur significant costs related to this proposal. If a fiscal impact were to result, the AGO may request additional funding through the appropriations process.

ASSUMPTION (continued)

Officials from the **Department of Social Services (DSS)** assume there is no fiscal impact to the Department. The Children's Division does not believe there would be a considerable increase in calls made to the child abuse and neglect hotline as a result of this legislation.

In response to a previous version of 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 crime of Coercing an Abortion which would become an A misdemeanor.

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 Corrections (DOC)** states that currently, the DOC has no offenders incarcerated for abortions or related offenses. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through incarceration (FY08 average of \$15.64 per offender, per day or an annual cost of \$5,709 per inmate) or through supervision provided by the Board of Probation and Parole (FY08 average of \$2.47 per offender, per day or an annual cost of \$902 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the Department. Eighteen (18) persons would have to be incarcerated per each fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

Officials from the **Department of Health and Senior Services (DHSS)** state the following:

Section 188.027.1:

DHSS is to provide printed materials or an informational video to the physician performing the abortion.

ASSUMPTION (continued)

In calendar year 2007, there were 11,470 resident abortions performed in Missouri. Since the Department has no way of determining exactly how many abortions will be conducted at each facility each year, it is assumed extra materials will need to be produced and provided to each facility. The Department assumes pamphlets/brochures for at least two times the number of 2007 abortions ($11,460 \times 2 = 22,940$, rounded up to 23,000) will need to be printed and distributed to the providers. At an estimated cost of \$1.00 per pamphlet/brochure, \$23,000 would be needed to purchase 23,000 copies.

Proposed Section 188.027.1 (3) requires DHSS to provide the physician with printed materials or an informational video describing the various methods of abortion relevant to the stage of pregnancy, as well as any medical risks associated with each method. Subdivision (5) requires information be provided on the possibility of the procedure causing pain to a fetus of at least 22 weeks gestation. All of this information will be provided in one informational sheet listing the types of abortions as well as the side effects. This will result in a cost of \$2,300 ($23,000 \times \0.10).

Section 188.027.1 (4):

This section states, "The woman shall be provided with a geographically indexed list maintained by the Department of Health and Senior Services of health care providers, facilities, and clinics that perform ultrasounds, including those that offer ultrasounds free of charge." The Department does not currently maintain information regarding ultrasound providers and is unaware of any licensing requirements for them. Therefore it is questionable whether there is currently a way to gather this information comprehensively. The cost of collecting and providing this information is unknown.

Section 188.027.1 (6b):

At least 24 hours prior to the procedure, the treating physician is required to explain the services available through the Missouri Alternatives to Abortion Program as well as any other programs and services available to pregnant women and mothers of newborn children that are offered by public and private agencies. This could potentially increase the number of referrals and the amount of services provided through the Alternatives to Abortion Program.

There were 11,470 resident abortions performed in 2007. The cost per client per year for the Alternatives to Abortion program in 2008 was \$806.94. It is estimated by the U.S. Census, 2007 American Community Survey that 34 percent of Missouri women 15 years to 50 years or older are at 200 percent of the federal poverty level, based on the census. Based on this assumption

ASSUMPTION (continued)

3,900 (11,470 x 0.34) women would be eligible for services provided through the Alternatives to Abortion program. Cost for services for an additional 3,900 women would be \$3,147,066 (3,900 x \$806.94).

The Department is unable to project how many of the estimated women eligible for the program would actually seek services. Therefore, the estimated fiscal impact for this portion is estimated to range between \$0 and \$3,147,066.

Section 188.027.3:

Requires the physician to provide the woman with a checklist form stating that she has been presented all the information required. This checklist is to be provided by DHSS. The cost for 23,000 pre-abortion checklists is \$6,325 (23,000 x \$0.275 each).

Section 188.027.10:

Requires every abortion facility to display signs that contain a statement enforcing the idea that consent to an abortion is voluntary. DHSS shall promulgate rules specifying the location of the signs. The sign requirement must be considered as a condition of licensure of abortion facilities under Chapter 197. Promulgation and enforcement of the necessary rules would not result in a significant cost to the Department and will therefore be absorbed with existing resources. The number of providers is unknown at this time. It is estimated that a minimum of 1,000 "coercion" posters will be need to be printed and distributed at a cost of \$1,000 (1,000 posters x \$1.00 each). Shipping the posters to the providers would be approximately \$3,000 (1,000 posters x \$3.00 shipping).

Section 188.027.11:

Requires DHSS to make all of the information provided to the physicians available to the public through the DHSS website, as well as maintain a toll-free twenty-four hour hotline where a caller can obtain information on a regional level concerning the agencies and services described in subsection 1. Information is currently available on the DHSS website under "Alternatives to Abortion" and "Unplanned Pregnancies". DHSS currently operates a toll-free 24 hour hotline that provides information on the agencies providing alternatives to abortion services regionally. According to the proposed legislation, the Department would be required to provide additional information through this hotline, including medical information. The current contractors providing services for the 24-hour hotline are not trained to provide this type of information;

ASSUMPTION (continued)

therefore extensive training would be required for the current contractor or an additional hotline will be required. The Department is in the process of researching the cost of providing this service, but at this time is not able to determine the exact cost for this service. The Department estimates the cost will be approximately \$100,000 annually. If the Department later determines the cost would be significantly less, a revised fiscal note response will be submitted.

Oversight assumes 100% of eligibles would not participate in the program. DHSS assumed a range of \$0 and \$3,147,066 for the fiscal impact. For fiscal note purposes only, Oversight has assumed 1 out of every 4 women would participate $\{\$786,767 = \$806.94 \times 975 (3,900 \times 25\%)\}$

In response to a previous version of this proposal, officials from the **Office of Prosecution Services (OPS)** assume the legislation will have no measurable fiscal impact. The potential fiscal impact on elected prosecuting attorneys will necessarily depend on the number of cases referred to their office for prosecution.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
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GENERAL REVENUE FUND

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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Costs - Department of Health and Senior Services

Fetal Development Charts	(\$23,000)	(\$23,690)	(\$24,401)
Type of Abortion Fact Sheet	(\$2,300)	(\$2,369)	(\$2,440)
Ultrasound Provider List	(Unknown)	(Unknown)	(Unknown)
Alternatives to Abortion Services	(Could exceed \$655,639)	(Could exceed \$810,369)	(Could exceed \$834,681)
Pre-Abortion Checklists	(\$6,325)	(\$6,515)	(\$6,710)
Coercion and Alternative Posters	(\$1,000)	(\$1,030)	(\$1,061)
Shipping Coercion & Alt Posters	(\$3,000)	(\$3,090)	(\$3,183)
24-Hour Hot Line	(\$100,000)	(\$100,000)	(\$100,000)
<u>Total Costs - DHSS</u>	<u>(Could exceed \$791,264)</u>	<u>(Could exceed \$947,063)</u>	<u>(Could exceed \$972,476)</u>

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Could exceed \$891,264)</u>	<u>(Could exceed \$1,047,063)</u>	<u>(Could exceed \$1,072,476)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

The proposed legislation may require increased regulation relating to facilities that provide abortions and physician who provide chemical abortions. This could lead to additional costs for these facilities.

FISCAL DESCRIPTION

Currently, abortions may only be performed when informed and written consent is freely given by the pregnant woman, except for abortions performed in the case of a medical emergency. This legislation changes the laws regarding the consent requirements for obtaining an abortion and creates the crime of coercing an abortion. In its main provisions, the legislation:

(1) Specifies that voluntary and informed consent is given freely only if at least 24 hours prior to the abortion:

(a) The woman has been informed in person, in writing and orally, of the name of the physician who is to perform or induce the abortion, medically accurate information about the abortion procedure, alternatives to the abortion, telephone number for the physician for any questions, the location of a hospital within 30 miles of where the abortion is performed or induced where the woman may receive follow-up care if complications arise, and details about the development of the unborn child;

(b) The woman's physician presents, in person, materials about the gestational ages of an unborn child, methods of abortion and its risks, the possibility of an abortion causing pain to the unborn child, and the child support liability of the unborn child's father;

(c) The physician offers to do a fetal ultrasound imaging and auscultation of the fetal heart tones to view the image and hear the heart beat of her unborn child at any local health care provider;

(d) Alternatives to abortion materials provided by a physician identify agencies that assist pregnant woman and the services they offer, explain the Missouri Alternatives to Abortion Services Program, and identify a web site and toll-free number for the program; and

(e) The physician informs and displays a public statement that advertises adoption alternatives are available and that it is illegal to coerce an adoption;

(2) Specifies that required information provided to pregnant women considering an abortion must be provided in a private room and that the woman must be given the opportunity to ask questions. Reading or language barriers must be addressed to ensure comprehension;

(3) Requires the pregnant woman to certify by signature on a checklist form provided by the Department of Health and Senior Services prior to an abortion that she was provided all required information and the opportunity to view an ultrasound and hear the heartbeat and that she was not coerced into having an abortion;

FISCAL DESCRIPTION (continued)

- (4) Requires a pregnant woman at 22 weeks gestation or more to be given the opportunity to choose to have a drug administered to eliminate or alleviate pain to the unborn child during the abortion;
- (5) Prohibits physicians from performing or inducing an abortion without a woman's signed checklist and informed consent given without coercion. If the physician believes the woman to be coerced, the physician must inform the woman of available services;
- (6) Requires emergency abortions to be certified in writing by the physician which clearly designates the nature of the medical emergency;
- (7) Prohibits payment for an abortion procedure to be collected until 24 hours after all required information has been provided to the woman seeking the abortion;
- (8) Specifies that all informational materials provided to a pregnant woman seeking an abortion must be produced by the Department by November 26, 2009. Materials must be provided to any health facility that provides abortions; and the Department must provide a toll-free, 24-hour telephone number where a caller can obtain regional information concerning agencies and services;
- (9) Prohibits an employer from requiring an employee or applicant to get an abortion as a requirement for employment;
- (10) Specifies that only licensed physicians can perform or induce an abortion. Anyone violating this provision will be guilty of a class B felony;
- (11) Specifies that coercing a woman to seek or obtain an abortion, by any illegal act, will be a misdemeanor or a felony depending on the type of illegal offense. A woman who has been coerced into having an abortion has not given consent to an abortion;
- (12) Specifies that any person who performs or induces an abortion on a woman, knowing that the woman has been coerced into an abortion, will be guilty of a class C felony;
- (13) Requires a health care provider or an abortion facility which has reasonable cause to suspect that a child, a vulnerable person, or a disabled person is the victim of a coerced abortion to report the suspected abuse to the appropriate Department;

FISCAL DESCRIPTION (continued)

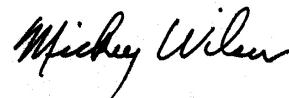
(14) Requires a health care provider or an abortion facility which has reasonable cause to suspect that a woman is the victim of a coerced abortion and has been subject to abuse by a present or former family or household member or the victim of stalking to provide the woman with information about orders of protection; and

(15) Prohibits a physician who knows that a woman has been coerced to seek an abortion from performing the abortion and requires the physician to certify that the woman has not given consent.

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-Administrative Hearing Commission
Department of Insurance, Financial Institutions and Professional Registration
Department of Corrections
Department of Health and Senior Services
Department of Social Services
Department of Public Safety
Office of the Secretary of State
Office of the State Public Defender
Missouri State Highway Patrol
Office of Prosecution Services



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March 9, 2009