

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4506-01
Bill No.: Perfected HB 1892
Subject: Pharmacy; Drugs and Controlled Substances; Health Care Professionals; Health and Senior Services Department
Type: #Corrected
Date: March 2, 2016
#Corrected to include omitted part of agency response.

Bill Summary: This proposal establishes the Narcotics Control Act.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	(\$913,756)	(\$4,852,232)	(\$4,586,257)
Total Estimated Net Effect on General Revenue	(\$913,756)	(\$4,852,232)	(\$4,586,257)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	6	11	11
Total Estimated Net Effect on FTE	6	11	11

☒ 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 2017	FY 2018	FY 2019
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

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

Section 195.453.1 - Funding for Narcotics Control System

DHSS assumes the costs associated with a narcotics control system will be funded with General Revenue. Also, since DHSS is not assured of any potential grant funding opportunities at this time, none of the costs are assumed to be funded by grants.

Further, DHSS assumes costs related to a prescription monitoring program would commence in FY 2017.

Oversight notes that the federal Department of Justice has grant funds of up to \$500,000 available for Prescription Drug Monitoring programs, and other grant monies may be available as well, once enabling legislation is passed. The DHSS is aware of these grants but is unable to apply for the grants until legislation has passed. For fiscal note purposes, potential grant monies have not been applied to costs as there is no assurance that the funds will be received. Grant funds are often limited to specific program costs and for specific periods of time, and are not on-going.

Section 195.450 through Section 195.471 - Narcotics Control Program (NCP)

One Health and Senior Services Manager (Band 1; \$41,188 annually) will be needed to perform the following duties:

- Draft a Request for Proposal to solicit bids for the required database. Once the contract is awarded, this individual will be needed on an ongoing basis to monitor the database contract and program, maintain ongoing communication with professional organizations regarding compliance with reporting requirements, and other state and local agencies, and the public regarding the program;
- Coordinate with investigative management of the Bureau of Narcotics and Dangerous Drugs (BNDD) for enforcement activities and with law enforcement and regulatory agencies of this and other states for sharing data and tracking outcomes;
- Develop rules, policies, and procedures for reporting by dispensers and access to data by authorized parties;
- Provide technical assistance to program participants on matters relating to the program;
- Supervise subordinate staff involved in program implementation;
- Design and prepare reports of program data and review data collected to determine trends; and
- Provide required educational programs regarding the NCP (Section 195.468 of the proposed legislation).

ASSUMPTION (continued)

One Health Program Representative I (\$30,984 annually) will:

- Provide support to the program;
- Respond to inquiries and requests for database reports received;
- Coordinate communication with other agencies and the public, and maintain a memoranda of understanding for data sharing;
- Assist practitioners in obtaining access to the reporting subsystem of the program;
- Generate and e-mail or generate, print, and fax reports as requested by authorized individuals and agencies that cannot access this information via the internet; and
- Respond to telephone inquiries regarding the program

One Investigative Manager (Band 1; \$41,188 annually) will:

- Review database information;
- Assign and supervise investigations;
- Assist the manager in operating the database and supervise investigative staff; and
- Assist the manager in providing the required educational courses (Section 195.468 of the proposed legislation).

The above three positions will be hired as of September 1, 2016.

Three Investigator II positions (\$37,548 each, annually) will be needed to respond to complaints and conduct investigations. These positions are assumed to be telecommuters. These positions will be hired as of January 1, 2017. This fiscal note assumes minimal staffing and the review and referral of only the most serious issues identified in the dispensation information. Additional staff would be required to increase the level of review and investigation.

DHSS provides that support from the **Office of Administration, Information Technology Support Division (OA, ITSD/DHSS)** will be needed to assist the DHSS in establishing and maintaining an application to monitor the prescribing and dispensing of schedule II, III and IV controlled substances by all professionals licensed to prescribe or dispense such substances in this state. Each dispenser will submit to DHSS in electronic format the required information in accordance with transmission standards established by the American Society for Automation in Pharmacy, or any successor organization, and shall report data within every seven days. A paper form alternative must be available for those provided a waiver for electronic submission by DHSS.

Infrastructure costs have been calculated using the FY 2016 State Data Center Cost Allocation Plan (SDC CAP) document. ITSD costs assume the use of an application built for the State of Missouri and hosted in the SDC as well as three servers to include development, testing and production with 100gb of disk storage for each.

ASSUMPTION (continued)

OA, ITSD/DHSS estimates IT consultant hours and costs (\$75 per hour contract rate) to be:

	FY 2017	FY 2018	FY 2019
Hours	8,067.6	6,192.75	0
Cost (\$75/hr)	\$605,070	\$464,454	0
On-going support	<u>0</u>	<u>\$109,626</u>	<u>\$219,252</u>
Consultant costs	\$605,070	\$574,080	\$219,252
Equipment & Supplies	<u>3,758</u>	<u>4,622</u>	<u>4,738</u>
Total Costs	<u>\$608,828</u>	<u>\$578,702</u>	<u>\$223,990</u>

#Section 195.456.8 - Potential Litigation

#This section could create an unknown, but potentially large fiscal impact due to litigation. DHSS is unable to estimate the amount, therefore, the fiscal impact is unknown.

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

Officials from the **OA, General Services Division (GS)** assume that neither the Department of Health and Senior Services nor any state employee would violate the provisions of the proposal. Therefore, it is assumed that no successful claims will be made against the Legal Expense Fund and the proposal would, thus, have no fiscal impact upon the OA, GS. However, should that assumption prove incorrect, significant costs could be incurred by the Legal Expense Fund.

Officials from the **OA, Administrative Hearing Commission** anticipate this legislation will not significantly alter its caseload. However, if similar bills pass resulting in more cases, there could be a fiscal impact.

Section 195.453.5 - Dispenser Fee Reimbursement

DHSS officials state section 195.453.5 of the proposed legislation requires DHSS to reimburse dispensers for fees and other direct costs of transmitting the required information. Based on recent discussions with the industries affected, the dispensers who will qualify for reimbursement will fall into three categories – pharmacies, ambulatory surgical centers and individual practitioners. Each transmission is expected to cost \$0.25. The number of transmissions is expected to grow three percent annually and is reflected below:

ASSUMPTION (continued)

Category	Number Statewide	FY 2018		FY 2019	
		Annual Transmissions	Reimbursement	Annual Transmissions	Reimbursement
Pharmacies	1,348	12,300,500	\$3,075,125	12,669,515	\$3,167,379
Ambulatory Surgical Centers	101	248,460	\$62,115	255,914	\$63,978
Individual Practitioners	6,017	1,480,182	\$370,046	1,524,587	\$381,147
TOTALS	7,466	14,029,142	\$3,507,286	14,450,016	\$3,612,504

Each dispenser is expected to invoice quarterly for a total of 29,864 (7,466 X 4) invoices in FY 2018 and FY 2019. DHSS would also be required to hire staff in both the Division of Administration (DA) and the Division of Regulation and Licensure (DRL) to process the invoices received from dispensers.

Based on current department practices, each invoice will take 10 minutes to process in DRL and 10 minutes to process in DA. Three different job categories will work together as follows to pay an invoice. In DRL, an Office Support Assistant will take 2½ minutes to open the invoice, log it into the tracking system and forward it to the Account Clerk II. In DRL, an Account Clerk II will take five minutes to determine and assign the account coding and forward to the Accountant I for review and approval. In DRL, the Accountant I will take 2½ minutes to verify the coding and funding availability and approve the document for central processing. In DA, an Office Support Assistant will take 2 ½ minutes to open the invoice and distribute it to the Account Clerk II. This position is also responsible for filing the documents after the payment processing is complete. In DA, the Account Clerk II will take five minutes to review, audit, and enter the payment documents from DRL into SAM II. In DA, the Accountant I will take 2½ minutes to apply final approval to the payment. The additional FTE required for invoice processing is as follows:

29,864 invoices X 20 minutes per invoice = 597,280 minutes to process invoices. 597,280 minutes / 60 minutes per hour = 9,954 hours. 9,954 hours/2,080 = 4.79 FTE (rounded to 5.00), broken down as follows:

ASSUMPTION (continued)

Job Title	Percent of the Time to Process a Claim	DRL FTE	DA FTE	Salary	Total Annual Salaries
Office Support Assistant	25	0.625	0.625	\$23,160	\$28,950
Account Clerk II	50	1.25	1.25	\$25,824	\$64,560
Accounting Generalist I/II	25	0.625	0.625	\$36,204	\$45,255
Totals	100	2.5	2.5		\$138,765

It is assumed these positions will be hired on January 1, 2017.

Oversight assumes the DHSS would not hire partial FTEs. However, to keep the total number of new staff at the 5 FTE DHSS has indicated would be necessary to process the claims, Oversight assumes DHSS would hire 1 FTE OSA, 3 FTE Account Clerk II, and 1 FTE Accounting Generalist I/II.

Section 195.465.1 - Administrative Penalties

Section 195.465.1 would allow the DHSS to collect an administrative penalty in the amount of \$1,000 for each violation when a dispenser does not submit data to the prescription monitoring database as required by law. It is not possible to estimate how many dispensers might not submit information as required, and this be assessed and administrative penalty. Administrative penalties collected would be distributed to schools under Article IX, section 7 of the Missouri Constitution. Any penalties collected would be deposited in General Revenue. The amount collected is assumed to be minimal and, therefore, no penalty revenue is included in the fiscal note estimate.

Section 195.468 - Education Courses

DHSS is required to create and implement three education courses. DHSS is currently required to provide educational courses and information by Section 195.198, RSMo, and assumes the new requirements will be met with existing resources.

In summary the DHSS assumes this proposal, including OA, ITSD/DHSS costs to the General Revenue Fund for FY 2017 will total \$913,756; FY 2018 costs will total \$4,835,206; and FY 2019 costs will total \$4,561,983.

ASSUMPTION (continued)

Oversight notes that original response from the **Office of Administration (OA), Facilities Management, Design and Construction (FMDC)** was not received in time to include it in the fiscal note. OA, FMDC officials state their response for this current proposal is the same as for the previous version.

In the previous version, OA, FMDC stated that additional space in lease facilities for additional staff for the DHSS will be needed. The current estimate is for every one (1) FTE, an additional 230 sq. ft. would be needed at a cost of \$21.00 per sq. ft., or \$3,012 annually per FTE. DHSS estimates space for an additional 8 FTE will be needed (3 additional FTE assumed to be commuters). Therefore, rental space costs are estimated at \$38,640 annually.

Officials from the **Department of Corrections (DOC)** state this bill establishes the Narcotics Control Act by replacing Section 195.015 and adding eight sections under Chapter 195 RSMo Drug Regulations, regarding the sale or transfer of chemicals.

The penalty provision 195.465.2 creates a class D felony for authorized persons who knowingly disclose or use dispensation information in a manner that violates rules under this act. The penalty is unchanged, but updated information is used to estimate the impact. As a new felony offense, standard impacts for class D felonies are used. In FY 2015, class D nonviolent sentences averaged 3.5 years, with 1.5 years served and 2 years on probation. Average class D probation sentences are 5 years with 3 years served. It is estimated that there will be 1 offender convicted to a term sentence with 2 sentenced to probation. Passage of this bill could lead to a cumulative DOC impact of 1.5 additional offenders in prison and 7.5 on probation by FY 2019.

The FY 2015 average cost of supervision is \$6.04 per offender per day or an annual cost of \$2,205 per offender. The DOC cost of incarceration is \$16.809 per day or an annual cost of \$6,135 per offender.

The DOC would assume this legislation will result in long term cost as indicated below; a 2% inflation factor has been included:

Year 2017 (10 months)	\$8,788
Year 2018	\$19,508
Year 2019	\$26,780
Year 2020	\$28,485
Year 2021	\$29,055
Year 2022	\$29,636
Year 2023	\$30,229
Year 2024	\$30,834
Year 2025	\$31,450
Year 2026	\$32,079

ASSUMPTION (continued)

Oversight assumes the DOC can absorb the minimal costs associated with FY 2017 and will present FY 2018 and 2019 costs for fiscal note purposes.

In response to the previous version of this proposal, the **Office of State Public Defender (SPD)** stated, for the purpose of this proposed legislation, officials from the SPD cannot assume that existing staff will provide competent, effective representation for any new cases where indigent persons are charged with any of the proposed new crimes relating to dispensation of pharmaceuticals monitoring.

While the number of new cases may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases.

Oversight assumes the SPD can absorb the additional caseload that may result from this proposal.

In response to the previous version of this proposal, officials from the **Office of Attorney General (AGO)** assumed any potential costs arising from this proposal can be absorbed with existing resources. The AGO may seek additional appropriations if the proposal results in a significant increase in cases.

In response to the previous version of this proposal, officials from the **Office of the Secretary of State (SOS)** states 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.

In response to the previous version of this proposal, officials from the **Joint Committee on Administrative Rules (JCAR)** stated the legislation is not anticipated to cause a fiscal impact to JCAR beyond its current appropriation.

ASSUMPTION (continued)

Officials from the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Public Safety, Missouri State Highway Patrol**, the **Missouri Office of Prosecution Services** and the **Office of State Courts Administrator** each assume the proposal would not fiscally impact their respective agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
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GENERAL REVENUE FUND

Costs - DOC (\$195.465)

Increase in incarceration and probation/parole costs	\$0	(\$19,508)	(\$26,780)
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Costs - DHSS (§§195.450 - 195.471)

Personal service	(\$150,789)	(\$366,468)	(\$370,133)
Fringe benefits	(\$79,041)	(\$211,131)	(\$212,132)
Equipment and expense	(\$75,098)	(\$169,137)	(\$140,718)
IT consultant costs & on-going expenses	(\$608,828)	(\$578,702)	(\$223,990)
Reimbursement to dispensers	\$0	(\$3,507,286)	(\$3,612,504)
Total Costs - DHSS	(\$913,756)	(\$4,832,724)	(\$4,559,477)
FTE Change - DHSS	6 FTE	11 FTE	11 FTE

ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND

	<u>(\$913,756)</u>	<u>(\$4,852,232)</u>	<u>(\$4,586,257)</u>
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Estimated Net FTE Change on the General Revenue Fund	6 FTE	11 FTE	11 FTE
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<u>FISCAL IMPACT - Local Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Licensed pharmacies and dispensing individual practitioners may incur an indeterminate fiscal impact for obtaining the computer hardware and software and related work hours required in entering their dispensing and transmitting data to the data collection location. This dispensing information is already maintained and documented by law; however, the proposed legislation would require the dispensing log information to be submitted periodically in an approved format. Any costs incurred may be offset, somewhat, by the benefits provided by being able to immediately access controlled substance dispensing data from the database. If a dispenser does not report as required they may be assessed a fine.

FISCAL DESCRIPTION

This bill establishes the Narcotics Control Act. In its main provisions, the bill: (1) Requires the Department of Health and Senior Services to establish and maintain a program to monitor the prescribing and dispensing of all Schedule II through Schedule IV controlled substances; (2) Requires each dispenser to electronically submit specified information to the department within 24 hours of dispensation; (3) Allows the department to issue a waiver to a dispenser who is unable to submit the required information electronically and allows a dispenser to submit the required information by paper form or other means; (4) Requires the department to reimburse each dispenser for the fees and other direct costs of transmitting the required information; (5) Requires all submitted prescription information to be confidential and not subject to public disclosure, with specified exceptions; (6) Requires the department to notify appropriate law enforcement or agencies if it has reasonable cause to believe may have violated the law or been in breach of professional standards; (7) Prohibits dispensation information submitted to the department from being used to prevent an individual from obtaining a concealed carry permit. (8) Allows the department to release non-personal, general information for statistical, educational, or research purposes; (9) Authorizes the department to contract with any other agency of this state or any other state with a private vendor or any state government that currently runs a narcotics control program; (10) Specifies that a dispenser who knowingly fails to submit required dispensation information to the department or knowingly submits incorrect dispensation information will be subject to an administrative penalty in the amount of \$1,000 for each violation; (11) Specifies that any person who unlawfully and knowingly accesses or discloses, or a person authorized to have prescription or dispensation information under these provisions or knowingly uses the information in a manner and for a purpose in violation of these provisions is guilty of a class D felony until December 31, 2016, and a class E felony beginning January 1, 2017; (12) Specifies that any person harmed or damaged by any violation of this section may bring a civil action for damages, as well as injunctive relief. Sovereign immunity shall not be available as a defense for the department of health and senior services in such an action. In the event the plaintiff prevails on any count. (13) Requires the department to create and implement

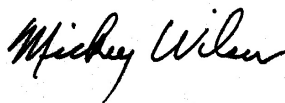
FISCAL DESCRIPTION (continued)

specified educational courses regarding the provisions of the bill and, when appropriate, to work with associations for impaired professionals to ensure intervention, treatment, and ongoing monitoring and follow up and encourage individual patients, 16 years of age or older, who are identified and who have become addicted to substances monitored by the program to receive addiction treatment.

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

SOURCES OF INFORMATION

Office of Attorney General
Department of Health and Senior Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Corrections
Department of Public Safety -
 Missouri State Highway Patrol
Joint Committee on Administrative Rules
Missouri Office of Prosecution Services
Office of Administration -
 Administrative Hearing Commission
 Division of Purchasing and Materials Management
 General Services Division
 Information Technology Services Division
Office of State Courts Administrator
Office of Secretary of State
Office of State Public Defender



Mickey Wilson, CPA
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