

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0046-02  
Bill No.: Perfected HCS for HB Nos. 90 & 68  
Subject: Pharmacy; Drugs and Controlled Substances; Health and Senior Services  
Department; Health Care; Health Care Professionals  
Type: Original  
Date: March 29, 2017

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Bill Summary: This proposal establishes the Narcotics Control Act.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue	(\$1,117,975)	(\$1,011,940)	(\$801,455)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(\$1,117,975)</b>	<b>(\$1,011,940)</b>	<b>(\$801,455)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 11 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
General Revenue	5	7	7
<b>Total Estimated Net Effect on FTE</b>	<b>5</b>	<b>7</b>	<b>7</b>

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

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### §§195.450 - 195.468 - Narcotics Control Act (NCA)

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

#### 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. DHSS further assumes costs related to a prescription monitoring program would commence in FY2018.

#### Sections 195.450 through Section 195.468 - NCA

#### **Division of Regulation and Licensure (DRL):**

It is assumed that the Division of Regulation and Licensure's (DRL) Section for Health Standards and Licensure's (HSL) Bureau of Narcotics and Dangerous Drugs (BNDD) will assume the duties set forth in the proposed sections. BNDD will require additional staff to implement the legislation. The following positions will be hired as of September 1, 2017.

One Investigative Manager (Band 1, \$45,600 annually) will be needed to perform the following duties:

- Assist Bureau Chief in drafting a request for proposal to solicit bids for the required database;
- 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;
- Review database information; and
- Assign and supervise investigations.

ASSUMPTION (continued)

One Administrative Office Support Assistant (\$29,580 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 memorandum 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

The following positions will be hired as of January 1, 2018.

Four Investigator II positions (\$38,304 annually, each) will be needed to respond to complaints and conduct investigations. These positions are assumed to be telecommuters and expected to travel extensively; it is assumed that the travel cost will be \$10,000 annually for each of the investigative staff.

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.

**Office of General Counsel:**

One full-time attorney (Legal Counsel, \$50,000 annually) would be needed to assist in drafting emergency and proposed regulations and forms; perform legal research and provide day-to-day legal counsel to the program; and represent the department in legal actions. This position will be hired September 1, 2017.

**Office of Administration (OA), Information Technology Services Division (ITSD)/DHSS:**

Infrastructure costs were calculated using the FY2017 State Data Center (SDC) Cost Allocation Plan (CAP) document. The use of an application built for the State of MO and hosted in the SDC is assumed. It is also assumed prescription data will be maintained for a maximum of 180 days. Aggregated information from each prescriber and dispenser data source shall remain segregated from any other data source. Three servers will be needed and costs include development, test and production with 100gb of disk storage for each.

Funding has been identified as "General Revenue" based on language in the bill that directs the department to establish and maintain this program "subject to appropriations".

ASSUMPTION (continued)

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

	FY 2018	FY 2019	FY 2020
Hours	10,104.48	4,501.44	0
Cost (\$75/hr)	\$757,836	\$337,608	0
On-going support	<u>0</u>	<u>\$112,283</u>	<u>\$224,566</u>
Consultant costs	\$757,836	\$449,891	\$224,566
Equipment & Supplies	<u>4,059</u>	<u>4,993</u>	<u>5,118</u>
Total Costs	<u>\$761,895</u>	<u>\$454,884</u>	<u>\$229,684</u>

The DHSS estimates total costs to the General Revenue Fund for FY2018 (including ITSD costs) of \$1,122,001; costs of \$995,362 for FY2019; and costs of \$776,397 for FY2020.

**Oversight** notes the DHSS used a lease cost for the additional rental space needed for three (3) new FTE of \$21 per square foot. This is an average of the lease rates for the various regions in the state. Oversight reduced the average cost to \$17.50 per square foot (which includes utilities and janitorial services), the amount provided by OA, Facilities Management, Design and Construction.

Officials from the **OA, Division of Facilities Management, Design and Construction (FMDC)** state additional space in leased facilities for new staff for agencies in the Cole County area is estimated at 230 sq. ft. per FTE times \$17.50 per sq. ft., or \$4,025 annually per FTE. This cost includes building lease costs, fuel and utilities, and janitorial services. If a larger space were needed, the space was needed in other regions of the state, or newly constructed space if required, the estimated costs would be higher cost per sq. ft. (estimated at \$24.50 per sq. ft.).

§195.465 - Penalty and felony provisions

Officials from the **Department of Corrections (DOC)** provide the following assumptions related to this proposal:

This legislation codifies prescription drug monitoring by amending Chapter 195 of the Missouri Revised Code by the addition of seven new sections. The purpose of this bill is to establish a controlled substance drug registry within the Department of Health and Senior Services (DHSS) to monitor prescribing and dispensing of Schedule II, III and IV controlled substances.

ASSUMPTION (continued)

HB 90 proposes a class E felony for individuals, authorized or unauthorized, who unlawfully access prescribing or dispensing information or discloses said information. In the 2016 HB 1892, the same violation has the penalty of a class D felony. The change in penalty classification reflects the changing felony classes which begins January 1, 2017. Therefore, data on class E felony are not available. In order to provide information on the impact of this legislation, standard impact for new offenses of a class D felony for a nonviolent offense is analyzed. In FY16, class D nonviolent sentences averages 3.6 years. Incarcerated offenders serve 2.3 years in prison and 1.3 years on parole. Average time for probation is 3.0 years. It is estimated, for each year, one offender is sentenced to a prison term while two offenders are given probation in Missouri.

The cumulative impact on DOC, with the passage of the Narcotic Control Act (HB 90), could result in an additional 2.3 offenders incarcerated and 7.3 persons on probation in FY23.

If this impact statement has changed from statements submitted in previous years, it is because the department's Budget and Research Section reviewed the way responses had been submitted and has developed a more precise way to calculate the impact. In previous years' responses, the full impact of recidivism for parole releases was not adequately calculated. Now we have been able to quantify the fact that some parolees are returned to prison after release and that has been added into the calculation of the impact. The total number of offenders has not changed but there is an assumption that they will spend more time back in prison rather than being on community supervision, which will increase the amount of the impacts.

The FY16 average cost of supervision is \$6.12 per offender per day or an annual cost of \$2,234 per offender. The DOC cost of incarceration is \$16.67 per day or an annual cost of \$6,085 per offender. DOC assumes a 2% annual inflation in costs.

The DOC would assume this legislation will result in the following long term costs to the General Revenue Fund:

FY18 (Year 1, 10 months)	\$8,794
FY19 (Year 2)	\$21,528
FY20 (Year 3)	\$30,133
FY21 (Year 4)	\$32,159
FY22 (Year 5)	\$32,802
FY23 (Year 6)	\$33,458
FY24 (Year 7)	\$34,127
FY25 (Year 8)	\$34,809
FY26 (Year 9)	\$35,506
FY27 (Year 10)	\$36,216

**Oversight** assumes the DOC would be able to absorb FY18 costs.

ASSUMPTION (continued)

Officials from the **OA, Division of Budget & Planning (B&P)** state section 195.465.1 contains an administrative penalty of \$1,000 per violation for dispensers that knowingly fail to submit or submit incorrect information. Section 195.465.2 states that any person who unlawfully and knowingly accesses or discloses, or a person authorized to have prescription and dispensation information who knowingly discloses such information, shall be guilty of a Class E felony. Any fines or penalties collected must be directed to the benefit of public schools and may increase total state revenue (TSR), but not 18(e). This would increase TSR by an unknown amount.

**Oversight** assumes the number of administrative penalties that may be imposed to be unknown. Oversight assumes the amounts collected will not be significant and, therefore, will not present unknown administrative penalties for fiscal note purposes.

Officials from the **Office of Attorney General (AGO)** assume 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.

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.

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (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 (or cases with increased penalties) 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.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS. The creation of a new crime creates additional responsibilities for county prosecutors which may, in turn, result in additional costs, which are difficult to determine.

ASSUMPTION (continued)

Officials from the **Joint Committee on Administrative Rules (JCAR)** state the legislation is not anticipated to cause a fiscal impact to JCAR beyond its current appropriation.

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.

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

House Amendment No. 1

Officials from the **DHSS** and the **DSS** assume the amendment does not have a fiscal impact on their organizations.

Due to time constraints, **Oversight** assumes the amendment will not change the responses provided by agencies in response to HCS for HB Nos. 90 & 68.



<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
<b>GENERAL REVENUE FUND</b>			
<u>Costs - DHSS (§§195.450-195.468)</u>			
Personal service	(\$180,925)	(\$281,180)	(\$283,992)
Fringe benefits	(\$96,829)	(\$155,891)	(\$156,729)
Equipment and expense	(\$78,326)	(\$98,457)	(\$100,917)
Computer system IT contract costs and maintenance fees (OA, ITSD/DHSS )	(\$761,895)	(\$454,884)	(\$229,684)
Total <u>Costs - DHSS</u>	<u>(\$1,117,975)</u>	<u>(\$990,412)</u>	<u>(\$771,322)</u>
FTE Change - DHSS	5 FTE	7 FTE	7 FTE
<u>Costs - DOC (§195.465)</u>			
Increase in incarceration costs	<u>\$0</u>	<u>(\$21,528)</u>	<u>(\$30,133)</u>
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(\$1,117,975)</u></b>	<b><u>(\$1,011,940)</u></b>	<b><u>(\$801,455)</u></b>
Estimated Net FTE Change on the General Revenue Fund	5 FTE	7 FTE	7 FTE
 <u>FISCAL IMPACT - Local Government</u>	 FY 2018 (10 Mo.)	 FY 2019	 FY 2020
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

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 proposal 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) Beginning January 1, 2019, the department will begin phasing in a requirement that dispensers report data in real time and all report data will be submitted in real time by January 1, 2020; (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; and (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 E felony.

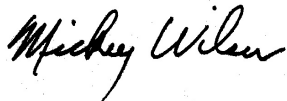
This legislation is not federally mandated, would not duplicate any other program but would require additional capital improvements or rental space.

## 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  
Department of Social Services -  
    MO HealthNet Division  
    Division of Legal Services

FISCAL DESCRIPTION (continued)

Joint Committee on Administrative Rules  
Missouri Office of Prosecution Services  
Office of Administration -  
    Administrative Hearing Commission  
    Division of Budget & Planning  
    Facilities Management, Design and Construction  
    General Services  
    Information Technology Services Division  
Office of State Courts Administrator  
Office of Secretary of State  
Office of State Public Defender



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