

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0461-01
Bill No.: Perfected HB 126
Subject: Abortion
Type: Original
Date: February 26, 2019

Bill Summary: This proposal requires the use of a fetal heartbeat detection test prior to an abortion and prohibits an abortion if a fetal heartbeat is detected.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	(Less than \$106,480)	(Less than \$100,000)	(Less than \$100,000)
Total Estimated Net Effect on General Revenue	(Less than \$106,480)	(Less than \$100,000)	(Less than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on FTE	0	0	0

☒ 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 2020	FY 2021	FY 2022
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Oversight was unable to receive some of the agency responses in a timely manner due to the short fiscal note request time. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

§§188.010 and 188.017 (HA 2 to HA 1)

In response to similar legislation (SB 345), officials from the **Office of Attorney General (AGO)** assume any additional litigation costs arising from this proposal can be absorbed with existing personnel and 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.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state this bill is anticipated to have no fiscal impact to the department. However, should the extent of the work be more than anticipated, the DIFP would request additional appropriation and/or FTE through the budget process.

Oversight does not have any information to the contrary. Oversight assumes the DIFP will be able to perform the additional duties required by this proposal with existing personnel and resources. Oversight will reflect a zero fiscal impact for the DIFP for fiscal note purposes.

In response to similar legislation (SB 345), **Oversight** notes that the **Missouri Office of Prosecution Services** have stated the proposal would not have a measurable fiscal impact on their organization. However, 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. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

In response to similar legislation (SB 345), officials from the **Department of Corrections (DOC)** assumed the proposal will have no fiscal impact on their organization. According to the Department of Health and Senior Services, Missouri currently has one licensed abortion facility

ASSUMPTION (continued)

(located in St. Louis). Women seeking abortions in Missouri will either go to another state or to the St. Louis facility. If this bill is enacted, the St. Louis facility closes. However, women will only have to drive a few more miles to Illinois, where abortions are legal.

Currently, there are three laws concerning abortion that contain penalties for violation (§188.080.001 - Class A misdemeanor; §188.080.002 - Class B felony; and §188.075.001 - Class A misdemeanor). No convictions of these statutes occurred in FY 2016 - 2018, even with the paucity of abortion facilities in the state. For these reasons, it is expected that enactment of this bill will have no fiscal impact on the DOC.

Oversight does not have any information to the contrary. Therefore, Oversight assumes there will be no fiscal impact to the DOC for fiscal note purposes.

In response to similar legislation (SB 345), officials from the **Department of Social Services (DSS)** stated the proposed language may be subject to legal challenge on the grounds that it may conflict with current federal law governing the Medicaid program to the extent that it would prohibit the Missouri Medicaid program from paying for abortions in cases of pregnancies arising from rape or incest, or in cases where the abortion is necessary to save the life of the mother. Under current federal law, state Medicaid programs are not required to pay for abortions except in cases of rape, incest and when necessary to save the life of the mother. This is known as the Hyde Amendment. The current version of the Hyde amendment is included in the federal appropriation bill for the Medicaid program (Pub. L. No. 115-245, §§506-07, 132 Stat. 2981(2018)).

In 1994, the U.S. District Court entered an injunction against Missouri directing Missouri to comply with the requirements of the Hyde Amendment (*Stangler v. Shalala*, 1994 WL 764104 (W.D. MO 1994)). Failure to comply with the requirements of current federal law could subject Missouri to the risk of litigation and sanction, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. The extent of the deferral or disallowance is unknown.

Oversight notes in response to HB 126, the DSS stated the legislation could result in the loss of all federal Medicaid funds. In FY 2019, there is over \$7.2 billion federal funds budgeted for MO HealthNet services across the Department of Social Services, Department of Mental Health, and Department of Health and Senior Services.

Oversight notes DSS officials provided the MO HealthNet Division paid for 2 abortions during FY 2018 to save the life of the mother; no abortions were paid for during FY 2017 and 2 abortion were paid for in FY 2016 that resulted from rape and incest.

ASSUMPTION (continued)

Oversight assumes federal funding would only be in jeopardy if, as a result of rape and incest, the DSS did not authorize funding for abortions for MO HealthNet recipients and the DSS actually had cases that met those conditions. Oversight contacted the DSS and requested a letter be obtained from the Centers for Medicare and Medicaid (CMS) services stating whether the provisions of 188.026.3 would result in the loss of federal funding. DSS believes it is unlikely CMS will provide such a letter. Since it is unknown whether DSS would lose some or all federal funding, Oversight will range the potential loss of federal funding from \$0 to Unknown.

In response to similar legislation (SB 345), **Oversight** notes that the **Department of Health and Senior Services**, the **Department of Public Safety**, **Missouri State Highway Patrol**, the **Office of State Courts Administrator**, the **Office of State Public Defender** and **Legislative Research** have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

§§188.015 and 188.038 (HA5)

In response to similar legislation (HB 771), officials from the **Office of Attorney General**, the **Department of Health and Senior Services**, the **Department of Insurance**, **Financial Institutions and Professional Registration** and the **Office of State Courts Administrator** assumed the provision of section had no fiscal impact to their organizations.

§188.028 (HA4)

In response to similar legislation (HB 127), officials from the **Office of Attorney General (AGO)** assumed any additional litigation costs arising from this proposal can be absorbed with existing personnel and 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 the work associated with the proposal with existing staff and resources.

In response to similar legislation (HB 127), **Oversight** notes that the **Department of Health and Senior Services**, the **Department of Social Services** and the **Office of State Courts Administrator** have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

ASSUMPTION (continued)

§188.033 (HA3)

In response to similar legislation (HB 282), officials from the **Department of Health and Senior Services (DHSS)** assumed the proposal would have no fiscal impact on their organization.

Oversight notes that from conversations with DHSS officials the department states they already have a surplus of the printed materials required by this proposal stored in their warehouse. In addition, DHSS states that the required materials are posted on their website and can be printed by clinics/providers when necessary. It is further assumed by DHSS officials that if someone needed the required materials to be sent to them, the clinic/provider would bear the mailing costs. Therefore, this proposal is not expected to have a fiscal impact on the DHSS.

In response to similar legislation (HB 282), **Oversight** notes that the **Office of Attorney General**, the **Department of Social Services**, the **Office of State Courts Administrator** and **St. Louis County** have each stated the proposal would not have a direct 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 organizations.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, the **City of St. Louis** and **Jackson County** were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to www.legislativeoversight.mo.gov.

§188.043 (HA2 - Medical Malpractice Insurance)

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** assume this provision will have no fiscal impact on their organization.

Oversight does not have any information to the contrary. Therefore, Oversight will no fiscal impact for the DIFP for this provision of the proposal.

§§188.020, 188.026, and 188.052 (HA 1)

In response to an early version of this proposal, officials from the **Department of Social Services (DSS)** stated the proposed language may be subject to legal challenge on the grounds that it may conflict with current federal law governing the Medicaid program to the extent that it would prohibit the Missouri Medicaid program from paying for abortions in cases of pregnancies arising from rape or incest, or in cases where the abortion is necessary to save the life of the

ASSUMPTION (continued)

mother. Under current federal law, state Medicaid programs are not required to pay for abortions except in cases of rape, incest and when necessary to save the life of the mother. This is known as the Hyde Amendment. The current version of the Hyde amendment is included in the federal appropriation bill for the Medicaid program (Pub. L. No. 115-245, §§506-07, 132 Stat. 2981(2018)).

In 1994, the U.S. District Court entered an injunction against Missouri directing Missouri to comply with the requirements of the Hyde Amendment (*Stangler v. Shalala*, 1994 WL 764104 (W.D. MO 1994)). Failure to comply with the requirements of current federal law could subject Missouri to the risk of litigation and sanction, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. The extent of the deferral or disallowance is unknown.

Oversight notes in response to HB 126, the DSS stated the legislation could result in the loss of all federal Medicaid funds. In FY 2019, there is over \$7.2 billion federal funds budgeted for MO HealthNet services across the Department of Social Services, Department of Mental Health, and Department of Health and Senior Services.

Oversight notes DSS officials provided the MO HealthNet Division paid for 2 abortions during FY 2018 to save the life of the mother; no abortions were paid for during FY 2017 and 2 abortion were paid for in FY 2016 that resulted from rape and incest.

Oversight assumes federal funding would only be in jeopardy if, as a result of rape and incest, the DSS did not authorize funding for abortions for MO HealthNet recipients and the DSS actually had cases that met those conditions. Oversight contacted the DSS and requested a letter be obtained from the Centers for Medicare and Medicaid (CMS) services stating whether the provisions of 188.026.3 would result in the loss of federal funding. DSS believes it is unlikely CMS will provide such a letter. Since it is unknown whether DSS would lose some or all federal funding, Oversight will range the potential loss of federal funding from \$0 to Unknown.

Officials from the **Department of Health and Senior Services (DHSS)** assumes §188.020 requires physicians to determine if there is a detectable heartbeat or brain function before performing or inducing an abortion upon a woman presumed to be pregnant.

DHSS assumes section 188.026.1-2 requires a physician performing an abortion to conduct a heartbeat determination exam, and a record of the results of the heartbeat determination exam to be included in the woman's medical record. The DHSS, Division of Regulation and Licensure, Section for Health Standards and Licensure (HSL) is responsible for regulating abortion facilities. This will require two additional steps to be added to the survey process to ensure the

ASSUMPTION (continued)

physician performing the abortion conducts a heartbeat determination exam and the medical record includes documentation of the heartbeat determination. It is assumed that these new questions will require less than 30 additional minutes per survey, at the three abortion facilities in Missouri, for a total of one and one-half hours of additional work a year. These surveys are conducted by a Health Facilities Nursing Consultant. The average hourly rate for this position is \$26.05, so the additional cost of these additional questions is \$39.08 annually (1.5 hours x 26.05).

The department anticipates being able to absorb these costs. However, until the FY20 budget is final, the department cannot identify specific funding sources.

DHSS assumes subsection 188.052.1(1) has been changed to require physicians performing abortions to report additional information to the department on forms prepared and provided by DHSS. The current electronic versions of the abortion reporting form and file layout; the Microsoft Access database for data entry, and the mainframe database will have to be modified to capture and store new information consisting of: time and date of the fetal heartbeat detection test, method of testing for the fetal heartbeat and results of the fetal heartbeat test. The department would not be able to absorb these costs for the modifications to the system.

The changes to the current paper abortion reporting form would fall into the established duties of the Bureau of Vital Statistics. The DHSS anticipates being able to absorb these costs. However, until the FY20 budget is final, the department cannot identify specific funding sources.

The proposed legislation creates 188.052.2(5) requiring the individual complication report for post-abortion care to include certification that the attending physician does not have any knowledge that the woman sought the abortion based solely on diagnosis, testing, or screening indicating the unborn child has, or potentially has Down Syndrome.

The proposed legislation would also create 188.052.2(6) requiring the individual complication report for post-abortion care to include certification that the attending physician does not have any knowledge that the woman sought the abortion based solely on the sex or race of the unborn child.

The proposed legislation will require a modification to the DHSS Complication Report for Post-Abortion Care to add the required "certification" fields for the attending physician. The revisions could be easily made using existing staff and resources in the ebb and flow of typical work of the Bureau of Vital Statistics, and since the form is made available to providers via the web, there would be a zero fiscal impact. The department anticipates being able to absorb these costs. However, until the FY20 budget is final, the department cannot identify specific funding sources.

ASSUMPTION (continued)

Oversight does not have any information to the contrary. Therefore, Oversight assumes the DHSS has sufficient staff and resources to perform the additional duties and will reflect no fiscal impact for these provisions in the fiscal note.

§188.375 (HA1 to HA1)

Based on responses to similar provisions from the current session, **Oversight** assumes for the purpose of this proposed legislation, that officials from the **Office of State Public Defender (SPD)** would state they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the proposed new class B and D felonies. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

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 where the right to counsel attaches.

Oversight notes over the last three fiscal years, the SPD has lapsed a total of \$152 of General Revenue appropriations (\$0 out of \$36.4 million in FY 2016; \$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018). Therefore, **Oversight** assumes the SPD is at maximum capacity and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, **Oversight** assumes the cost for a new APD could approach \$100,000 per year.

Oversight assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

Officials from the **Office of Administration (OA), Information Technology Services Division (ITSD)/DHSS** state modification of the existing application tools will be needed to add additional data collection as specified in this proposal. Tools include a Microsoft Access database for data entry of paper forms, file layouts for electronic exchange and mainframe database used for statistical reporting.

ASSUMPTION (continued)

OA, ITSD assumes any new IT project/system will be bid out as ITSD resources are at full capacity. The IT consultant rate of \$75 per hour is used to estimate system modifications. It is assumed 86.4 IT consultant hours will be needed to complete this project. One time costs to the General Revenue Fund in FY 2020 of \$6,480 are estimated. ($\$75/\text{hour} * 86.4 \text{ hours} = \$6,480$).

DHSS officials note that at the time of the submission of this fiscal note, an ITSD fiscal estimate has been requested but a response has not yet been received. The Division of Community and Public Health has received an estimate from ITSD for nearly identical work for a different fiscal note (FN 0799-01N). However, if the provisions of this proposal require more work than estimated, the proposed costs could be higher.

Oversight notes ITSD assumes that every new IT project/system will be bid out because all their resources are at full capacity. Due to the minimal impact of this proposal, Oversight assumes ITSD would contract out the work to IT consultants and will present the one-time costs of \$6,480 to GR funds as estimated by ITSD.

Section B (HA2 to HA1)

This proposal contains a provisional enactment clause requiring an opinion by the Attorney General of Missouri, a proclamation by the Governor of Missouri, or the adoption of a concurrent resolution by the Missouri General Assembly that the U.S. Supreme Court has overruled, in whole or in part, Roe v. Wade or a U.S. Constitutional Amendment is adopted that has the effect of restoring or granting Missouri the authority to regulation abortions.

Bill as whole

Officials from **Department of Corrections, Department of Insurance, Financial Institutions and Professional Registration, Missouri Office of Prosecution Services, Office of State Courts Administrator and Office of State Public Defender** each assume this proposal will have no impact on their respective organizations.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GENERAL REVENUE FUND			
<u>Costs - SPD (\$188.375)</u>			
Salaries, fringe benefits, and equipment and expense	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Costs - OA, ITSD/DSS (§§188.027 and 188.375)</u>			
IT consultant contract work	<u>(\$6,480)</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Less than \$106,480)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
FEDERAL FUNDS			
<u>Loss - DSS (\$188.026)</u>			
A potential reduction in federal funding if Missouri is found to be non-compliant with federal law	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal may have a significant negative fiscal impact on small business health care providers if the State of Missouri loses federal funding used to provide services to MO HealthNet recipients through these health care providers.

FISCAL DESCRIPTION

This proposal modifies provisions relating to abortion.

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 Attorney General
Department of Health and Senior Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Corrections
Legislative Research
Department of Social Services
Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of State Public Defender

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