

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0461-04
Bill No.: SCS for HB 126
Subject: Abortion
Type: Original
Date: April 19, 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	(\$6,480)	\$0	\$0
Total Estimated Net Effect on General Revenue	(\$6,480)	\$0	\$0

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 8 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

§§188.010 and 188.017 - Right to Life of the Unborn Child Act

Oversight notes that the **Department of Corrections (DOC)** has stated the proposal would not have a direct fiscal impact on their organization.

Oversight notes in response to similar legislation (SB 345), officials from the **Department of Corrections (DOC)** stated according to the Department of Health and Senior Services, Missouri currently has one licensed abortion facility (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.

Oversight notes that the **Department of Social Services (DSS)** has stated the proposal would not have a direct fiscal impact on their organization.

Oversight notes in response to similar legislation (SB 345), officials from the **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

ASSUMPTION (continued)

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 also 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.

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.

§188.020 and 188.026 - Detectable fetal heartbeat/brain function

Officials from the **Department of Health and Senior Services (DHSS), Division of Regulation and Licensure (DRL)** states §§ 188.020 and 188.026.11 of the proposed legislation requires a physician performing an abortion to conduct a fetal heartbeat or brain function determination exam, and a record of the results of the fetal heartbeat and brain function determination exam to be included in the woman's medical record. The DHSS, DRL, 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 a physician performing an abortion conducts a fetal heartbeat or brain function determination exam, and the medical record includes documentation of the fetal heartbeat or brain function determination. It is assumed that these new survey 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.

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.

§188.052 - Abortion reports

Officials from the **DHSS, Division of Community and Public Health (DCPH)** state subsection 188.052.1 has been changed to require physicians performing abortions to report additional information to the department on forms prepared and provided by DHSS. Changing the paper abortion reporting form would fall into the established duties of the Bureau of Vital Statistics and would not result in additional costs. However, the electronic version 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. This new information consists 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. It is anticipated costs to update the electronic abortion reporting system would cost \$6,480 in one-time costs to the General Revenue Fund in FY 2020.

In addition, 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 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 Department of Health and Senior Services 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.

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.

ASSUMPTION (continued)

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.

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. ($\$75/\text{hour} * 86.4 \text{ hours} = \$6,480$).

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.

Bill as a whole

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.

Officials from the **Missouri Office of Prosecution Services** have stated the proposal would not have a 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.

ASSUMPTION (continued)

Oversight notes that the **Department of Corrections**, 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.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GENERAL REVENUE FUND			
<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>(\$6,480)</u>	<u>\$0</u>	<u>\$0</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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