

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0461-18  
Bill No.: Truly Agreed to and Finally Passed SS for SCS for HB 126  
Subject: Abortion  
Type: Original  
Date: June 20, 2019

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Bill Summary: This proposal modifies provisions of law relating to abortions.

**FISCAL SUMMARY**

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
General Revenue	(\$6,480) to (\$76,075)	\$0 or (\$80,631)	(Could exceed \$1,400,000 to \$1,481,312)	(Could exceed \$4,900,000 to \$4,982,424)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(\$6,480) to (\$76,075)</b>	<b>\$0 or (\$80,631)</b>	<b>(Could exceed \$1,400,000 to \$1,481,312)</b>	<b>(Could exceed \$4,900,000 to \$4,982,424)</b>

**Note:** The fiscal note does not reflect the possibility that some of the tax credits could be utilized by insurance companies against insurance premium taxes. If this occurs, the loss in tax revenue would be split between the General Revenue Fund and the County Foreign Insurance Fund, which ultimately goes to local school districts.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</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>				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
Federal Fund	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
General Revenue	0 or 1.10 FTE	0 or 1 FTE	0 or 1 FTE	0 or 1 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>0 or 1.10 FTE</b>	<b>0 or 1 FTE</b>	<b>0 or 1 FTE</b>	<b>0 or 1 FTE</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>				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### §135.630 Pregnancy Resource Center Tax Credit

Officials from the **Office of Administration - Budget and Planning** state that for all tax years beginning on or after January 1, 2021, a taxpayer shall be allowed to claim a tax credit against the taxpayer's state tax liability in an amount equal to 70% of the amount such taxpayer contributed to a pregnancy resource center, an increase from the 50% previously allowed. Assuming credits issued remain at the \$3.5M cap, this may reduce total state revenue by \$1.4M per year beginning in FY22.

This provision also expands the definition of pregnancy resource center to include facilities that offer services under the Alternatives to Abortion Program. It also removes the cap on the pregnancy resource center tax credit for all fiscal years beginning on or after July 1, 2021. These provisions may increase utilization of the pregnancy resource center tax credit which could decrease general and total state revenues by an unknown amount and impact the calculation pursuant to Article X, Section 18(e).

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** assume this legislation could have a potential unknown decrease of premium tax revenues as a result of the removing the limit on the Pregnancy Resource Centers tax credit. Premium tax revenue is split 50/50 between General Revenue and County Foreign Insurance Fund except for domestic Stock Property and Casualty Companies who pay premium tax to the County Stock Fund. The County Foreign Insurance Fund is later distributed to school districts throughout the state. County Stock Funds are later distributed to the school district and county treasurer of the county in which the principal office of the insurer is located. It is unknown how each of these funds may be impacted by tax credits each year.

**Oversight** notes according to the Tax Credit Analysis submitted by the Department of Social Services regarding this program, the Pregnancy Resource Center tax credit program had the following activity;

	FY 2016	FY 2017	FY 2018	FY 2019 (projected)	FY 2020 (projected)
Certificates Issued	4,363	4,628	4,416	4,400	5,400
Amount Authorized	\$2,499,442	\$2,443,386	\$2,499,394	\$2,500,000	\$3,500,000
Amount Issued	\$2,499,442	\$2,443,386	\$2,499,394	\$2,500,000	\$3,500,000
Amount Redeemed	\$1,845,875	\$2,183,505	\$2,094,375	\$2,000,000	\$3,000,000

Amount Outstanding - \$2,346,957    Amount Authorized but Unissued - \$0

ASSUMPTION (continued)

**Oversight** notes the pregnancy resource center tax credit program currently has a \$2.5 million annual cap. The cap is scheduled to increase to \$3.5 million starting July 1, 2019. Also, if the amount of tax credits redeemed in a fiscal year is less than the cumulative amount, the difference shall be carried over to a subsequent fiscal year or years and shall be added to the cumulative amount of tax credits that may be authorized in that fiscal year or years. Therefore, adding unused credits from the previous year(s), the cap in any given year past FY 2019 could well exceed \$3.5 million. The tax credit was scheduled to sunset on December 31, 2024. In response to similar legislation this year, DOR confirmed that this tax credit is a first come first served credit and they have not had to apportion the credit.

**Oversight** notes the pregnancy resource center tax credit program allows a taxpayer to receive a tax credit up to 50% of the contribution they make to a pregnancy resource center. Currently a pregnancy resource center can provide counseling, emotional and material support to a client but are prohibited from providing childbirth or abortion services.

**Oversight** notes this proposal allows facilities that offer services under the Alternatives to Abortion program to qualify for the pregnancy resource center. Oversight assumes this could expand the number of pregnancy resource centers that are eligible to take donations and issue this tax credit. However, Oversight will not reflect a fiscal impact from this change alone.

**Oversight** notes that starting January 1, 2021 (FY 2021) this proposal increases the amount of the credit from 50% of the contribution to 70% of the contribution. Increasing the tax credit percentage amount could encourage additional taxpayers to participate in the program. At 50%, the \$3.5 million cap would generate \$7,000,000 in contributions. This proposal would increase the credit rate to 70% and therefore, cost the state \$4,900,000 (\$7 million x 70%) in credits. This could result in an additional \$1,400,000 (\$4.9 m - \$3.5 m) in credits per year. Oversight will show an impact of could exceed \$1.4 million annually starting in FY 2022 (when calendar year 2021 tax returns are filed).

**Oversight** notes this proposal also would remove the sunset language from the pregnancy resource center tax credit. Since this program is to sunset on December 31, 2024, removal of the sunset would continue this credit past FY 2025. Oversight will show the impact as a loss of state revenues of could exceed \$4.9 million annually starting in FY 2026 (current \$3.5 m cap + \$1.4 m increase in percentage).

**Oversight** notes with the combination of;

- expanding the definition of pregnancy resource centers;
- increasing the percentage of the credit; and
- removing the cap

would increase the utilization of the credit and Oversight will show all impacts as Could exceed the estimates provided above.

ASSUMPTION (continued)

§188.027 & §188.052- Printed materials to include information on causing pain

Officials from the **Department of Health and Senior Services - Office of General Counsel (DHSS)** state section 188.027.1 (5) and Section 188.052.1 made changes to the booklet that DHSS prints and gives to health care providers to hand to women who have abortions, and the rule changes that will need to be made to the abortion reports as a result of changes in 188.052 will require legal review. The Department of Health and Senior Services (DHSS), Office of General Counsel will need an additional 0.10 FTE for an attorney (salary of \$64,500 per year) to perform the legal review and research necessary to ensure the new guidelines and information for this proposed legislation has been properly vetted and implementation is completed quickly and with fiscal responsibility. Due to current workload being at maximum limits, these costs cannot be absorbed.

**Oversight** assumes 0.1 FTE would not be provided fringe benefits and the state would only pay Social Security and Medicare benefits of 7.65 percent. In addition, Oversight assumes the DHSS would not need additional rental space for 0.1 FTE. However, if multiple proposals pass during the legislative session requiring additional FTE, cumulatively the effect of all proposals passed may result in the DHSS needing additional rental space.

**Oversight** assumes DHSS could absorb some of the additional duties without adding .10 of an FTE; however, DHSS has stated due to current workload being at maximum limits, these cost cannot be absorbed. Therefore, Oversight will range the cost from \$0 (.10 FTE can be absorbed) to \$9,443 (.10 FTE is not absorbed) to the General Revenue Fund in FY 2020.

Officials from the **Department of Health and Senior Services - Division of Community and Public Health (DHSS)** assume section 188.052.1 amends the requirement for the physician who performed or induced the abortion to file an individual abortion report that includes a certification that the physician does not have any knowledge that the woman sought the abortion solely because of prenatal diagnosis, test, or screening indicating Down Syndrome or the potential of Down Syndrome in the unborn child and a certification that the physician does not have any knowledge that the woman sought the abortion solely because of the sex or race of the unborn child.

The new requirements of Section 188.052.1 would result in updates being made to the electronic version of the abortion reporting form, the file layout, and the mainframe database so that the mandated certifications could be submitted, captured, and stored.

For this bill, DHSS -ITSD assumes they will contract out the programming changes needed for modification of existing application tools to add additional data collection. Tools include Microsoft Access database for data entry of paper forms, file layouts for electronic exchange and

ASSUMPTION (continued)

mainframe database used for statistical reporting. ITSD estimates the project would take 86.40 hours at a contract rate of \$75 per hour for a total cost to the state of \$6,480.

**Oversight** notes ITSD assumes that every new IT project/system will be bid out because all their resources are at full capacity. Oversight notes that an average salary for a current IT Specialist within ITSD is \$51,618, which totals roughly \$80,000 per year when fringe benefits are added. Assuming that all ITSD resources are at full capacity, Oversight assumes ITSD may (instead of contracting out the programming) hire an additional IT Specialist to perform the work required from this bill. Therefore, Oversight will range the fiscal impact from the cost of contracting out the work (\$6,480) to hiring an additional FTE IT Specialist (roughly \$80,000 per year).

§188.375 - Late-term pain-capable unborn child protection act

**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. 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).

Bill as a whole

Officials from the **Department of Social Services (DSS)** assume the proposal would not have a fiscal impact on their agency.

In response to legislation with similar provisions banning abortions except in medical emergencies (SB 345), officials from 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. (See the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2019, Pub. L. No. 115-245, §§506-07, 132 Stat. 2981 (2018).)

ASSUMPTION (continued)

In 1994 the United States District Court entered an injunction against Missouri directing Missouri to comply with the requirements of the Hyde Amendment. (Stangler vs. 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 sanctions, 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 a previous version of HB 126, 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 abortions 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 Corrections (DOC)** state that this proposal modifies provisions relating to abortion. No convictions have occurred in the last three fiscal years relating to abortion; therefore, DOC assumes the proposal will have no 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

ASSUMPTION (continued)

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.

Officials from the **Department of Revenue**, the **Department of Social Services**, the **Office of the Governor**, the **Joint Committee on Legislative Research**, the **Department of Public Safety - Missouri Highway Patrol**, the **Office of the State Courts Administrator** and the **City of Columbia** each assume the proposal will have no fiscal impact on their respective organizations.

In response to a previous version, officials from the **Office of Prosecution Services** and the **Office of the State Public Defender** each assumed the proposal will have no fiscal impact on their organization

**Oversight** notes that the above mentioned agencies have stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

Officials from the **Attorney General's Office (AGO)** assume any additional ligation cost arising from this proposal can be absorbed with existing resources. AGO may seek additional appropriations if the proposal results in a significant increase in cases.

**Oversight** notes that the AGO has stated that any additional litigation cost arising from this proposal can be absorbed. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for the AGO.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2026)
<b>GENERAL REVENUE FUND</b>				
Cost - DOR				
§135.630 removing the cap and sunset language from the pregnancy resource center tax credit & increasing credit to 70% p. 3-4	<u>\$0</u>	<u>\$0</u>	<u>(Could exceed \$1,400,000)</u>	<u>(Could exceed \$4,900,000)</u>



<u>FISCAL IMPACT -</u> <u>State Government</u> (continued)	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2026)
<u>Cost - DHSS</u> (§§ 188.027 & 188.052) p. 5				
Salary	\$0 to (\$5,375)	\$0	\$0	\$0
Fringe Benefits	\$0 to (\$411)	\$0	\$0	\$0
Equipment and Expense	<u>\$0 to (\$3,657)</u>	<u>\$0</u>	<u>\$0</u>	\$0
Total Cost - DHSS	<u>\$0 to (\$9,443)</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>FTE Change -</u> DHSS	0 to 0.10 FTE	0 FTE	0 FTE	0 FTE
<u>Cost - DHSS - ITSD</u> cost (ranged from contracting out programing (\$6,480) to hiring additional FTE IT Specialist) (§188.027 - §188.052) p. 5-6	(\$6,480) to (\$66,632)	\$0 to (\$80,631)	\$0 to (\$81,312)	\$0 to (\$82,424)
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<u><b>(\$6,480) to</b></u> <u><b>(\$76,075)</b></u>	<u><b>\$0 or</b></u> <u><b>(\$80,631)</b></u>	<u><b>(Could exceed</b></u> <u><b>\$1,400,000 to</b></u> <u><b>\$1,481,312)</b></u>	<u><b>(Could exceed</b></u> <u><b>\$4,900,000 to</b></u> <u><b>\$4,982,424)</b></u>
Estimated Net FTE Change to General Revenue	0 to 1.10 FTE	0 or 1 FTE	0 or 1 FTE	0 or 1 FTE

**Note: The fiscal note does not reflect the possibility that some of the tax credits could be utilized by insurance companies against insurance premium taxes. If this occurs, the loss in tax revenue would be split between the General Revenue Fund and the County Foreign Insurance Fund, which ultimately goes to local school districts.**

<u>FISCAL IMPACT -</u> <u>State Government</u> <u>(continued)</u>	<u>FY 2020</u> <u>(10 Mo.)</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>Fully</u> <u>Implemented</u> <u>(FY 2026)</u>
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**FEDERAL FUNDS**

Loss - DSS  
 (§188.375)

A potential  
 reduction in federal  
 funding if Missouri  
 is found to be non-  
 compliant with  
 federal law p. 6-7

<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>
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**ESTIMATED NET  
 EFFECT ON  
 FEDERAL FUNDS**

<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>
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FISCAL IMPACT -  
Local Government

FY 2020  
(10 Mo.)

FY 2021

FY 2022

Fully  
Implemented  
(FY 2026)

\$0

\$0

\$0

\$0

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 and the pregnancy resource center tax credit.

The bill modifies the definition of a pregnancy resource center for the purposes of the pregnancy resource center tax credit to include facilities that provide assistance to women and families with crisis pregnancies or unplanned pregnancies by offering services specified in the bill and services provided under the Missouri Alternatives to Abortion Services Program in Section 188.325, RSMo. The tax credit is increased from 50% of the amount contributed to 70% beginning January 1, 2021, removes the cumulative amount of tax credits claimed by all taxpayers in the fiscal year beginning July 1, 2021, and removes the sunset provision (Section 135.630).

This proposal contains a contingency clause for section 188.017.

This proposal contains an emergency clause for section 188.028.

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  
Department of Revenue  
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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