

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0633-14  
Bill No.: Truly Agreed To and Finally Passed HCS for SS No. 4 for SB 224  
Subject: Civil Procedure; Courts  
Type: Original  
Date: June 7, 2019

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Bill Summary: This proposal modifies various Supreme Court Rules relating to discovery.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	\$0 to (Unknown, Could Exceed \$574,620)	\$0 to (Unknown, Could Exceed \$574,620)	\$0 to (Unknown, Could Exceed \$574,620)
<b>#Total Estimated Net Effect on General Revenue</b>	<b>\$0 to (Unknown, Could Exceed \$574,620)</b>	<b>\$0 to (Unknown, Could Exceed \$574,620)</b>	<b>\$0 to (Unknown, Could Exceed \$574,620)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
<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 8 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</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 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
General Revenue	Up to 15 FTE	Up to 15 FTE	Up to 15 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>Up to 15 FTE</b>	<b>Up to 15 FTE</b>	<b>Up to 15 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>			
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**FISCAL ANALYSIS**

**ASSUMPTION**

Officials at the **Office of the State Public Defender (SPD)** assume the following:

With Section 25.02 removed from this version, the focus changes to investigator time. Because this bill allows the prosecutor to withhold (redact) contact information on key witnesses, this will significantly increase the amount of investigation that is required in a large number of criminal cases. In addition, while not all cases require depositions, certain complex criminal litigation requires a substantial number of depositions; because the bill limits the number of depositions that may be taken without a court order, it will also increase the amount of investigatory work that must be performed in a significant number of cases.

Job Title	Job Class	Annual	# Required	Total
Investigator	C00300	\$31,608	15	\$474,120
Travel @ \$250/Month	140	\$3,000	15	\$45,000
Office @\$50/Month	190	\$600	15	\$9,000
Rent @ \$1900/Year	680	\$1,900	15	\$28,500
Phone & Net @ \$1200/Year	340	\$1,200	15	\$18,000
				\$574,620

**Oversight** inquired the SPD regarding their response. In the previous version of the proposal, discovery was included and SPD responded needing 48 attorneys because both the legal and investigative aspect was needed. Because section 25.02 is removed from this version of the proposal, only the investigative portion will be needed, which can be done by investigators as mentioned in SPD’s response above. Therefore, Oversight will reflect a \$0 to unknown cost that could exceed SPD’s cost to the General Revenue Fund for additional investigators needed by SPD.

ASSUMPTION (continued)

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 \$5,000. 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 require additional resources.

Officials at the **Office of the State Courts Administrator**, the **Office of Administration**, the **Office of the Attorney General**, the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Corrections**, the **Department of Revenue**, the **Missouri Department of Transportation**, the **Department of Conservation** and the **Office of Prosecution Services** each assume no fiscal impact to their agency from this proposal.

**Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
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**GENERAL REVENUE FUND**

<u>Costs</u> - SPD - potential increase in investigation and deposition costs - based on potentially time equivalent to 15 investigators	\$0 to (Unknown, Could Exceed <u>\$574,620</u> )	\$0 to (Unknown, Could Exceed <u>\$574,620</u> )	\$0 to (Unknown, Could Exceed <u>\$574,620</u> )
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<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>\$0 to (Unknown, Could Exceed \$574,620)</u></b>	<b><u>\$0 to (Unknown, Could Exceed \$574,620)</u></b>	<b><u>\$0 to (Unknown, Could Exceed \$574,620)</u></b>
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Estimated net FTE change to the General Revenue Fund	Up to 15 FTE	Up to 15 FTE	Up to 15 FTE
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<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

Small businesses involved in litigation and small law businesses could be impacted by this proposal.

FISCAL DESCRIPTION

This act modifies numerous Supreme Court rules relating to discovery.

DISCOVERY IN CRIMINAL CASES

FISCAL DESCRIPTION (continued)

Under this act, prosecutors have the discretion to redact personal identifying information in materials and information that the state is required to disclose to the defendant's counsel during the discovery phase of a criminal proceeding.

DISCOVERY IN CIVIL CASES - REQUIREMENT OF PROPORTIONALITY

The act requires that parties may discover any relevant matter, not privileged, as described in the act, provided that the matter is proportional to the needs of the case considering several factors described within the act.

DISCOVERY IN CIVIL CASES - LIMITS ON FREQUENCY OR EXTENT OF DISCOVERY AND ELECTRONICALLY STORED INFORMATION

The act requires that the court limit the frequency or extent of discovery if it determines that certain factors exist. Additionally, a party does not need to provide discovery of electronically stored information if the source of the information is not reasonably accessible because of an undue burden or cost. Even if a showing of undue burden or cost is made, the court may order and specify the conditions for the discovery if the requesting party shows good cause.

DISCOVERY IN CIVIL CASES - LIMITS ON PRIVILEGED INFORMATION AND TRIAL PREPARATION MATERIALS

If information produced is subject to a claim of privilege or protection as trial preparation material, the claiming party may notify any receiving party of the claim and the basis for it. A notified party is required to return, sequester, or destroy the specified information and may present it under seal to the court for claim determination. Additionally, the party shall take steps to retrieve any information disclosed prior to notification, shall preserve the information until the claim is resolved, and shall not use or disclose the information until the claim is resolved.

An attorney who receives privileged information involving an adverse or third party and who has reasonable cause to believe that the information was wrongfully obtained shall not read the information, shall promptly notify the other attorney to return the information, and shall delete and take reasonable measures to assure that the information is inaccessible. An attorney notified has the obligation to preserve the information.

The production of privileged or protected trial preparation materials is not a waiver of the privilege or protection from discovery in the proceeding.

DISCOVERY IN CIVIL CASES - LIMITS ON INTERROGATORIES AND DEPOSITIONS

The act limits the number of written interrogatories that may be served upon a party to 25, including all discrete subparts.

### FISCAL DESCRIPTION (continued)

For oral or written depositions, leave of court is required if the deponent is confined in prison or the parties have not stipulated to a deposition and:

- The deposition would result in more than 10 depositions being taken by the plaintiffs, or by the defendants, or by the third-party defendants;
- The deponent has already been deposed in the case; or
- The plaintiff seeks a deposition prior to the expiration of 30 days after the service of the summons and petition upon any defendant, except leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery.

The act additionally limits the length of any oral deposition to one day of seven hours, provided that the court may order additional time for any deposition under certain circumstances. The court is permitted to impose sanctions on persons who impede, delay, or otherwise frustrate the fair examination of a deponent.

### DISCOVERY IN CIVIL CASES - LIMITS ON REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Under this act, a party may serve a request to produce and permit the requesting party or its representative to inspect, copy, test, or sample designated documents, electronically stored information, or any designated tangible things. Requests may specify that electronically stored information be produced in native format. Objections to part of a request shall specify the part and permit inspection of the rest.

### DISCOVERY IN CIVIL CASES - LIMITS ON REQUESTS FOR ADMISSIONS

The act limits the number of written requests for admission that may be served upon a party to 25 without leave of the court or stipulation of the parties. However, this limitation shall not apply to requests regarding the genuineness of documents.

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

Missouri Department of Transportation  
Office of the State Public Defender  
Office of the State Courts Administrator  
Office of Administration  
Department of Insurance, Financial Institutions and Professional Registration  
Department of Corrections  
Office of Prosecution Services  
Office of the Attorney General  
Department of Conservation  
Department of Revenue  
Office of the Secretary of State



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June 7, 2019

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June 7, 2019