

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1364-01
Bill No.: SB 251
Subject: Professional Registration and Licensing
Type: Original
Date: February 22, 2019

Bill Summary: This proposal establishes the “Fresh Start Act of 2019.”

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue Fund	\$0 to (\$26,555)	\$0 to (\$13,902)	\$0 to (\$14,051)
Total Estimated Net Effect on General Revenue	\$0 to (\$26,555)	\$0 to (\$13,902)	\$0 to (\$14,051)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Various DIFP Funds	(Could be greater than \$616,734)	(Could be greater than \$686,244)	(Could be greater than \$692,806)
Total Estimated Net Effect on <u>Other</u> State Funds	(Could be greater than \$616,734)	(Could be greater than \$686,244)	(Could be greater than \$692,806)

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
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue Fund	0 to 0.225 FTE	0 to 0.125 FTE	0 to 0.125 FTE
Various DIFP Funds	0 to 8 FTE	0 to 8 FTE	0 to 8 FTE
Total Estimated Net Effect on FTE	0 to 8.225 FTE	0 to 8.125 FTE	0 to 8.125 FTE

☒ 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

Section 324.012

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** assume this legislation requires that each state licensing authority list the specific criminal convictions that could disqualify an applicant from receiving a license. Further, licensing authorities shall only list criminal convictions that are specific and directly related to the duties and responsibilities for the licensed occupation. Currently no such list exists. As a result, the department would need ongoing attorney services to develop the list and determine which convictions are "specific and directly related" to the type of license being applied for. Legal staff would also be required to research all criminal conviction types from each of the other states to determine if they are relevant to the license type being applied for. In order to maintain a list that is accurate and up-to-date, continuous research regarding various state conviction definitions will be required. The department estimates at least \$200,000 in additional FTE or legal contract costs (estimating three attorney FTE at \$68,310 annually or work in various division / boards in the department) to various department funds annually for this work. The exact costs could be greater. The department would need to request additional FTE and/or expense appropriation through the budget process to handle this additional workload.

DIFP also assumes this legislation authorizes that an individual with a criminal record may petition a licensing authority at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. The licensing authority shall inform the individual of their standing within 30 days of receiving the petition. Each written determination that an applicant's criminal conviction is a specifically listed disqualifying conviction "shall be documented with written findings for each of the grounds or reasons...by clear and convincing evidence sufficient for a reviewing court". The licensing authority may charge a fee not to exceed \$25.00 for each petition.

According to 2017 census figures, there are approximately 6.114 million Missourians. According to data provided by officials at the Department of Public Safety's Missouri Highway Patrol in June of 2016, there were 955,954 individuals within the state Criminal History System (CHS) with open records** (SB 588 FN). Therefore, 15.6% of Missourians have an open record in the state's CHS. (See <http://www.moga.mo.gov/OverSight/Over20161//fispdf/4320-06T.ORG.pdf>)

The department currently licenses over 600,000 individuals. $15.6\% \text{ of } 600,000 = 93,600$. So potentially 93,600 of department licensees could have open records in the CHS.

ASSUMPTION (continued)

If only 5% of the estimated 93,600 individuals that have an open criminal record petitioned the department to determine whether the individual's record would disqualify them from obtaining a license, the department would receive 4,680 petitions per year. The department has no way to estimate the average hours of work each petition would take, but even 20 hours of additional work per petition would be a significant FTE and expense cost to the department. The department estimates this cost to various department funds would be over \$400,000 (estimating 5 additional attorney/investigator FTE in various divisions in the department at \$45,000 salary plus fringe and expense and equipment costs), which includes accounting for the revenue from the \$25.00 petition fee. The department would need to request additional FTE and expenses through the budget process to handle this additional workload. This additional cost could also cause fee increases to licensees. However, the ultimate cost depends upon level of utilization of the provisions found in the bill, which is unknown.

** Open record is defined as; Open records include convictions, arrests within 30 days, pending charges and suspended imposition of sentences during probation. Closed records cannot be accessed via this site. Closed records include records where the accused is found not guilty, charges were nolle prossed or dismissed, suspended imposition of sentence cases after probation is completed, and arrests after 30 days where no charges have yet been filed or reported by the prosecuting attorney. The repository not only maintains state charges (misdemeanors and felonies), but also maintains selected ordinance violations reported by municipalities.

Source: <https://www.machs.mshp.dps.mo.gov/MocchWebInterface/faq.html>

In summary, **Department of Insurance, Financial Institutions and Professional Registration** assumes a cost of Unknown but greater than \$616,734 in FY 2020, \$686,244 in FY 2021 and \$692,806 in FY 2022 to Various Department Funds to provide for the implementation of all of the changes in this proposal.

Oversight assumes the DIFP will need at least 8 attorneys and may or may not incur additional unknown cost of \$100,00 for either or both contracting and additional legal staff as a result of this proposal. Oversight will reflect the estimated DIFP cost as (Could be greater than \$616,734) in FY 2020, (Could be greater than \$686,244) in FY 2021 and (Could be greater than \$692,806) in FY 2022.

Officials from the **Department of Revenue (DOR)** assume this legislation creates the "Fresh Start Act of 2019" and may impact the issuance or denial of a dealer license as it relates to the required criminal background check.

ASSUMPTION (continued)

Administrative Impact

To implement the proposed changes, the Department may be required to:

- Update the Dealer Operating Manual;
- Amend and update administrative rules; and
- Train staff.

FY 2020 - Motor Vehicle Bureau

Management Analysis Spec I	40 hrs. @ \$18.42 per hr.	= \$ 737
Administrative Office Support Asst.	15 hrs. @ \$13.78 per hr.	= \$ 207
Revenue Manager	80 hrs. @ \$20.59 per hr.	= \$1,647
Total		= \$2,591

FY 2020 - Personnel Services Bureau

Administrative Analyst III	10 hrs. @ \$19.80 per hr.	= \$ 198
Total Costs		= \$2,789

The Department anticipates that the DOR will be able to absorb these costs and that there will be no fiscal impact as a result of this proposal.

Oversight notes that the Department of Revenue has 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 DOR.

Section 324.012.4

Officials from the **Department of Health and Senior Services - Directors Office (DHSS)** assume the proposed legislation allows an individual with a criminal record to petition a licensing authority at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include details on the individual's criminal record, and the licensing authority shall inform the individual of his or her standing within thirty days of receiving the petition from the applicant.

The Department of Health and Senior Services will require .125 FTE for an attorney (\$64,500 average annual salary) to process the increased number of petitions created from this proposed legislation. The attorney duties may include:

ASSUMPTION (continued)

- Reviewing requests for records (sunshine and/or subpoenas)
- Coordinating and advising with program staff to determine whether the Department has records responsive to requests
- Reviewing of individual records
- Determining appropriate response
- Responding to requestor
- Drafting/filing motions to quash subpoenas when necessary
- Possible referrals to the Attorney General's Office
- Assisting in the preparation of the documentation regarding each petition that must be done within thirty days of receiving the petition.

The Department assumes that these additional petitions will require 260 hours of an attorney's time each year for a total of .125 FTE ($260/2,080 \text{ hours} = .125$). This translates to a yearly additional cost of \$8,062.60 ($\$31.01 \text{ an hour} \times 260 \text{ hours} = \$8,062.60$). Due to current workload being at maximum limits, these costs cannot be absorbed.

Section 324.012.9

DHSS assumes the proposed legislation requires the promulgation of rules and regulations, which include the following duties (but not all inclusive): establish guidelines, implement strategies, make evidence-based system changes, and create policy recommendations. The Department of Health and Senior Services (DHSS), Office of General Counsel will need an additional .1 FTE for an attorney (salary of \$64,500 per year) in FY 2020 to perform the 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 DHSS could absorb some of the additional duties without adding .225 FTE in FY 2020 and .0125 FTE in FY 2021 and FY 2022; 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 (.225 FTE can be absorbed) to \$26,555 (0.225 FTE is not absorbed) in FY 2020 and \$0 (.0125 FTE can be absorbed) to roughly \$14,000 (0.225 FTE is not absorbed) in FY 2021 and FY 2022 to the General Revenue Fund.

Section 324.012.4(1)

Officials from the **Department of Health and Senior Services - Division of Regulation and Licensure (DRL)** assume the proposed legislation requires DRL's, Section for Health Standards and Licensure, Bureau of Narcotics and Dangerous Drugs (BNDD) and the Bureau of Emergency

ASSUMPTION (continued)

Medical Services (EMS) to revise its existing licensing requirements to explicitly list the specific criminal convictions that could disqualify an applicant from receiving a license.

It is assumed it will take BNDD's Health and Senior Services Manager (\$66,798, average annual salary) approximately 40 hours to make the required changes. Based on 2,080 working hours per year, this would require 0.02 FTE to assume these duties ($40 \text{ hours} \div 2,080 \text{ hours per year} = 0.02$) for a total personal service cost of \$1,336 ($\$66,798 \times 0.02$) for FY20.

It is assumed it will take EMS's Health and Senior Services Manager (salary \$60,784) approximately 40 hours to make the required changes. Based on 2,080 working hours per year, this would require 0.02 FTE to assume these duties ($40 \text{ hours} \div 2,080 \text{ hours per year} = 0.02$) for a total personal service cost of \$1,216 ($\$60,784 \times 0.02$) for FY20. Creating a total cost for DRL of \$2,552.

The proposed legislation also allows a licensing authority to charge a fee to recoup costs when an individual with a criminal record petitions the licensing authority for a determination of whether their criminal record will disqualify them from obtaining a license. DRL assumes fees will not be charged for this service.

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

Oversight notes that the DRL has 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 DLR.

Bill as a whole:

Officials from the **Department of Economic Development**, the **Department of Natural Resources**, the **Department of Agriculture**, the **Department of Transportation**, the **Office of Administration - Administrative Hearing Commission**, the **Department of Public Safety - Missouri Highway Patrol** each assume the proposal will have no fiscal impact on their respective organizations.

ASSUMPTION (continued)

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.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GENERAL REVENUE FUND			
<u>Cost - DHSS</u>			
Salary	\$0 to (\$12,094)	\$0 to (\$8,143)	\$0 to (\$8,225)
Fringe Benefits	\$0 to (\$6,050)	\$0 to (\$4,058)	\$0 to (\$4,083)
Equipment and Expense	<u>\$0 to (\$8,411)</u>	<u>\$0 to (\$1,701)</u>	<u>\$0 to (\$1,743)</u>
<u>Total Cost - DHSS</u>	<u>\$0 to (\$26,555)</u>	<u>\$0 to (\$13,902)</u>	<u>\$0 to (\$14,051)</u>
FTE Change - DHSS	0 to 0.225 FTE	0 to 0.125 FTE	0 to 0.125 FTE
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>\$0 to (\$26,555)</u>	<u>\$0 to (\$13,902)</u>	<u>\$0 to (\$14,051)</u>
Estimated Net FTE to the General Revenue Fund	0 to 0.225 FTE	0 to 0.125 FTE	0 to 0.125 FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2020 (10 Mo.)	FY 2021	FY 2022
VARIOUS DIFP FUNDS			
<u>Revenue</u> - DIFP	\$117,000	\$117,000	\$117,000
\$25 petition fee (Section 324.012)			
<u>Cost</u> - DIFP			
Salaries	(\$358,275)	(\$434,229)	(\$438,572)
Fringe Benefits	(\$193,246)	(\$233,206)	(\$234,529)
Equipment and Expense	(\$82,213)	(\$35,809)	(\$36,705)
Other Fund Cost (Additional FTE or	(\$0 or	(\$0 or	(\$0 or
Legal Contract Cost for listing criminal	<u>Unknown,</u>	<u>Unknown,</u>	<u>Unknown,</u>
convictions (Section 324.012)	<u>greater than</u>	<u>greater than</u>	<u>greater than</u>
	<u>\$100,000)</u>	<u>\$100,000)</u>	<u>\$100,000)</u>
<u>Total Cost</u> - DIFP	<u>(Could be</u>	<u>(Could be</u>	<u>(Could be</u>
	<u>greater than</u>	<u>greater than</u>	<u>greater than</u>
	<u>\$733,734)</u>	<u>\$803,244)</u>	<u>\$809,806)</u>
FTE Change - DIFP	8 FTE	8 FTE	8 FTE
ESTIMATED NET EFFECT TO	<u>(Could be</u>	<u>(Could be</u>	<u>(Could be</u>
VARIOUS DIFP FUNDS	<u>greater than</u>	<u>greater than</u>	<u>greater than</u>
	<u>\$616,734)</u>	<u>\$686,244)</u>	<u>\$692,806)</u>
Estimated FTE Change to Various DIFP Funds	0 to 8 FTE	0 to 8 FTE	0 to 8 FTE
<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

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill adds several new sections relating to professional registration, including the licensing of:

- (1) Applicants with a criminal record;
- (2) Apprenticeship programs;
- (3) Dietitians;
- (4) Cosmetologists; and
- (5) Plumbers.

LICENSE APPLICANTS WITH A CRIMINAL RECORD

This bill introduces a section that will be known as the "Fresh Start Act of 2019." A person cannot be disqualified from licensure for any occupation solely or in part because of a prior conviction of a crime, unless the crime directly relates to the duties and responsibilities for the licensed occupation (Section 324.012.1 and 324.012.3, RSMo).

Each state licensing authority must revise its existing licensing requirements to explicitly list which specific criminal convictions could disqualify an applicant. The licensing authority cannot consider arrests without a conviction. Disqualifying convictions must be specific and directly related to the duties and responsibilities of the occupation (Section 324.012.4).

In determining whether a particular applicant with a conviction will be denied a license, the licensing authority must use a clear and convincing standard of proof and determine the nature and seriousness of the crime, the passage of time since the commission of the crime, the relationship of the crime to the fitness required to perform the duties of the occupation, and any evidence of rehabilitation (Section 324.012.4).

An individual with a conviction cannot be disqualified from an occupation for more than five years, unless the crime is violent or sexual in nature or if the individual was convicted of another crime during that five-year period (Section 324.012.4).

An individual with a conviction can petition the licensing authority for a determination of whether or not the individual's criminal record will disqualify him or her from licensure. The licensing authority must respond within 30 days (Section 324.012.5).

If an individual is denied a license based on a previous criminal conviction, the licensing authority must notify the individual of the grounds for denial. Evidence for the grounds for denial must have clear and convincing evidence sufficient for a reviewing court. The applicant has the right to a hearing to challenge the licensing authority's decision.

FISCAL DESCRIPTION (continued)

The licensing authority has the burden of proof on whether the conviction directly relates to the occupation (Section 324.012.6).

These provisions do not apply to peace officers or law enforcement personnel (Section 324.012.7).

APPRENTICESHIP PROGRAMS

This bill requires licensing authorities to grant a license to applicants who have completed the 8th grade, completed a federally approved apprenticeship program, and passed any necessary examination. The passing score for any examination cannot be higher than the passing score required for any non-apprenticeship license, and there cannot be an examination required for an apprenticeship license if there isn't one required for a nonapprenticeship license (Sections 324.025.3 and 324.025.4).

For some types of apprenticeships, the number of working hours required cannot be more than the number of educational hours required for a non-apprenticeship license (Section 324.025.4).

DIETITIANS

This bill allows any person to disseminate free literature or provide individualized nutrition assessment, guidance, encouragement, recommendations, or weight control services as to the use of food, food materials or dietary supplements without a dietitian license, as long as the person does not hold himself or herself out as a dietitian (Section 324.206).

COSMETOLOGISTS

Currently, 1500 hours of training are required for cosmetologists. This bill requires at least 1000 hours training for the classification of hairdresser, and 400 of those hours can be applied toward the classification of cosmetologist. Currently, 750 hours of training are required for the classification of esthetician; this bill allows 500 of those hours to apply toward the classification of cosmetologist (Section 329.050).

PLUMBERS

Currently, applicants for a master plumber license are required to be at least 25 years old, applicants for a journeyman plumber license are required to be at least 21 years old, and applicants for a master drainlayer license are required to be at least 25 years old.

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

Department of Insurance, Financial Institutions and Professional Registration
Office of Administration
 Administrative Hearing Commission
Department of Revenue
Department of Health and Senior Services
Department of Natural Resources
Department of Agriculture
Department of Transportation
Department of Public Safety
 Missouri Highway Patrol



Kyle Rieman
Director
February 22, 2019

Ross Strobe
Assistant Director
February 22, 2019