

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1691-01
Bill No.: HB 345
Subject: Abortion; Attorney General; Courts; Crimes and Punishment; General Assembly;
Governor & Lieutenant Governor; Health Care Professionals; Medical Procedures
and Personnel; Physicians
Type: Original
Date: February 26, 2019

Bill Summary: This proposal makes the performance or inducement of an abortion, except in a medical emergency, a criminal offense.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on General Revenue	\$0	\$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 6 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

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.

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.

Officials from the **Department of Corrections (DOC)** assume 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 (located in St. Louis). Women seeking abortions in Missouri will either go to another state or to the St. Louis facility. If HB 345 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 HB 345 will have no fiscal impact on the DOC.

ASSUMPTION (continued)

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.

Officials from the **Department of Social Services (DSS)** state 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.

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.

ASSUMPTION (continued)

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.

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.

<u>FISCAL IMPACT - State Government</u>	FY 2020	FY 2021	FY 2022
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FEDERAL FUNDS

Loss - DSS (\$188.026)

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>
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ESTIMATED NET EFFECT ON FEDERAL FUNDS

	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2020	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

Under this act, the General Assembly declares its intention that the state and its political subdivisions shall be a "sanctuary of life" to protect pregnant women and their unborn children.

Additionally, this act establishes the "Right to Life of the Unborn Child Act". Under this act, an abortion performed or induced upon a woman, unless in cases of medical emergencies, shall be a Class B felony and shall subject the person performing or inducing the abortion to suspension or revocation of his or her professional license.

This act has a contingent effective date.

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 Public Safety -
Missouri State Highway Patrol
Department of Social Services
Legislative Research
Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of State Public Defender



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