

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3191-01  
Bill No.: SB 593  
Subject: Bonds-Surety; Circuit Clerks; Civil Penalties; Crimes and Punishment;  
 Employees-Employers; Judges; Notary Public; Secretary of State  
Type: Original  
Date: February 4, 2020

Bill Summary: This proposal modifies provisions relating to notaries public.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	(Less than \$100,000 to Unknown)	(Less than \$100,000 to Unknown)	(Less than \$100,000 to Unknown)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Less than \$100,000 to Unknown)</b>	<b>(Less than \$100,000 to Unknown)</b>	<b>(Less than \$100,000 to Unknown)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Other State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Legal Expense Fund	\$0	\$0	\$0
Colleges and Universities	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 10 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<b>Total Estimated Net Effect on 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 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<b>Local Government</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Office of the Secretary of State (SOS)** assume 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 from the **Office of Administration - General Services** assume section 486.805 appears to create a new cause of action and damages. If a claim were successfully brought against a state agency or a state employee alleging a violation of this legislation, the Legal Expense Fund could be required to pay such claim or claims. However, the number of potential claims, the severity of those claims, and the ultimate costs associated with any settlement or judgment resulting from those claims cannot be forecasted with any degree of assurance to their accuracy.

The state self-assumes its own liability under the state Legal Expense Fund, Section 105.711, RSMo. It is a self-funding mechanism whereby funds are made available for the payment of any claim or judgment rendered against the state in regard to the waivers of sovereign immunity or against employees and specified individuals. Investigation, defense, negotiation or settlement of such claims is provided by the Office of the Attorney General. Payment is made by the Commissioner of Administration with the approval of the Attorney General.

**Oversight** notes most LEF costs are reimbursed from the General Revenue Fund (GR). GR has paid for the majority of payments from the LEF since payments on LEF cases for agencies with designated reimbursable funds have been relatively small. According to Office of Administration - Risk Management (OARM), broader budget authority to transfer from Federal and Other Funds beginning in FY 18 allowed for an increase of percentage of payments from Federal and Other Funds. Table 1 below shows LEF costs broken down for GR versus Federal Funds/Other Funds.

Table 1: Legal Expense Fund payments from GR and Fed/Other

	<b>GR</b>	<b>Fed/Other</b>	<b>Total</b>	<b>GR %</b>	<b>Fed/Other %</b>
<b>FY 15</b>	\$9,197,461	\$661,555	\$9,859,016	93%	7%
<b>FY 16</b>	\$11,386,339	\$600,489	\$11,986,828	95%	5%
<b>FY 17</b>	\$19,983,784	\$4,217,582	\$24,201,366	83%	17%
<b>FY 18</b>	\$18,625,000	\$9,649,513	\$28,274,513	66%	34%
<b>Total</b>	\$59,192,584	\$15,129,139	\$74,321,723	80%	20%

Source: Office of Administration

OARM provided Oversight with claim payment data from FY 2015 to FY 2018. Based on the data provided, Oversight estimated the number of claims and amount paid by claim type shown in table 2 below. Motor vehicle claims accounted for 69% of the total number of claims but only 11% of the value of claims. Claims related to discrimination accounted for 8% of the total number of claims but 25% of the value of claims paid.

Table 2: Payment data **by type** of claim (FY 15-18)

<b>Type of Claim</b>	<b>Number of Claims</b>	<b>Cost of Claims</b>
Discrimination	67	\$19.6 million
Wrongful Death	5	\$11.9 million
Motor Vehicle	583	\$8.6 million
Medical Malpractice	10	\$8.3 million
STL & KC Police	5	\$5.4 million
Tort	10	\$4.6 million
Harassment	3	\$4.3 million
Personal Injury	10	\$3.6 million
Class Action Law Suit	1	\$2.6 million
Dangerous Condition of Property	96	\$1.6 million

Source - OARM: Includes motor vehicle and dangerous condition of property claims.

ASSUMPTION (continued)

**Oversight** notes the cost of any potential liability would be entirely dependent of the number of claims and circumstances of the claims filed; therefore the cost is ultimately unknown.

Oversight does not have any information to the contrary in regards to OA's assumption; therefore, Oversight will range the fiscal impact from \$0 (does not increase litigation) to an "Unknown" cost to the Legal Expense Fund as well as to Colleges and Universities (increased claims).

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with any of the proposed new crimes regarding Notaries - all new Misdemeanors. In FY 2020, SPD did not have any cases under RSMo 486. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

**Oversight** notes over the last three fiscal years, the SPD has lapsed a total of \$153 of General Revenue appropriations (\$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018; and \$1 out of \$46.0 million in FY 2019). Therefore, **Oversight** assumes the SPD is at maximum capacity and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, Oversight assumes the cost for a new APD could approach \$100,000 per year.

**Oversight** assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

ASSUMPTION (continued)

Officials from the **Joint Committee on Administrative Rules (JCAR)** state this legislation is not anticipated to cause a fiscal impact beyond its current appropriation.

**Oversight** assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

Officials from the **Office of Prosecution Services** assume there is no measurable fiscal impact. The enactment of new crimes creates additional responsibilities for county prosecutors which may in turn result in additional costs which are difficult to determine.

Officials from the **Department of Transportation** assume the fiscal impact of this bill is not quantifiable, but is likely negative. Chapter 486.805.3 extends liability to MoDOT, as an employer of notaries public, for negligence in the course of employment. The notary bond will likely be unavailable to MoDOT in the distribution of such costs, even in the event that the bond was posted by MoDOT on the notary's behalf. Therefore, the potential risk of litigation against MoDOT is likely to increase.

Officials from the **Department of Corrections** assume the proposal will have no fiscal impact on their organization. This proposal addresses several misdemeanor offenses, which are not generally under the purview of the Department. The proposal also repeals one class E felony offense, in which there were no prison admissions or probation cases opened in FY 2019.

Officials from the **Missouri Department of Conservation, Attorney General's Office, Department of Public Safety-Missouri State Highway Patrol, Department of Labor and Industrial Relations, Department of Public Safety-Capitol Police, Office of State Courts Administrator, and Department of Commerce & Insurance** each assume the proposal will have no fiscal impact on their respective organizations.

Officials from the **City of Kansas City, City of Springfield, City of Columbia, St. Louis County Department of Justice Services, Springfield Police Department, and St. Louis County Police Department** each assume the proposal will have no fiscal impact on their organization.

**Oversight** notes there is a potential of unknown cost to local political subdivisions that employ notaries. Therefore, Oversight will range the fiscal impact to local political subdivisions from \$0 (does not increase litigation to local governments) to an "Unknown"(increased claims).

ASSUMPTION (continued)

**Oversight** only reflects the responses that we have received from state agencies and political subdivisions; however, other cities, counties, schools, and colleges were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
<b>GENERAL REVENUE FUND</b>			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims (\$486.805)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Cost</u> - Office of the State Public Defender (\$578.700)	(Less than <u>\$100,000</u> )	(Less than <u>\$100,000</u> )	(Less than <u>\$100,000</u> )
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b>(Less than \$100,000 to <u>Unknown</u>)</b>	<b>(Less than \$100,000 to <u>Unknown</u>)</b>	<b>(Less than \$100,000 to <u>Unknown</u>)</b>
<b>OTHER STATE FUNDS</b>			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims (\$486.805)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>ESTIMATED NET EFFECT TO OTHER STATE FUNDS</b>	<b>\$0 to <u>(Unknown)</u></b>	<b>\$0 to <u>(Unknown)</u></b>	<b>\$0 to <u>(Unknown)</u></b>
<b>FEDERAL FUNDS</b>			
<u>Cost</u> - Potential increase in claims (\$486.805)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>ESTIMATED NET EFFECT TO FEDERAL FUNDS</b>	<b>\$0 to <u>(Unknown)</u></b>	<b>\$0 to <u>(Unknown)</u></b>	<b>\$0 to <u>(Unknown)</u></b>





## FISCAL DESCRIPTION

This act repeals the current law regulating notaries public and replaces it with a new chapter.

A notary shall be liable to any person for all damages proximately caused by the notary's negligence, intentional violation of law, or official misconduct in relation to a notarization.

A surety for a notary's bond shall be liable to any person for damages proximately caused that person by the notary's negligence, intentional violation of law, or official misconduct in relation to a notarization during the bond term, but this liability shall not exceed the dollar amount of the bond or of any remaining bond funds that have not been disbursed to other claimants.

An employer of a notary shall be liable to any person for all damages proximately caused that person by the notary's negligence, intentional violation of law, or official misconduct in performing a notarization during the course of employment, if the employer directed, expected, encouraged, approved, or tolerated the notary's negligence, violation of law, or official misconduct either in the particular transaction or, impliedly, by the employer's previous action in at least one similar transaction involving any notary employed by the employer.

Additionally, a notary who performs any other act prohibited by this act or fails to perform a required act shall be guilty of a misdemeanor, punishable by a fine of no more than \$500 or imprisonment of not more than 6 months, or both.

### On the Part of Non-Notaries

Any person who is not a notary and who knowingly acts as or otherwise impersonates a notary shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding five hundred dollars or imprisonment for not more than six months, or both.

Any person who knowingly obtains, conceals, defaces, or destroys the seal, journal, or official records of a notary or who knowingly solicits, coerces, or in any way influences a notary to commit official misconduct shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding five hundred dollars.

The provisions of this act become effective January 1, 2021.


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 Administration  
Attorney General's Office  
Office of the State Public Defender  
Joint Committee on Administrative Rules  
Office of Prosecution Services  
Department of Transportation  
Missouri Department of Conservation  
Department of Corrections  
Department of Public Safety-Missouri State Highway Patrol  
Department of Labor and Industrial Relations  
Department of Public Safety-Capitol Police  
Office of State Courts Administrator  
Department of Commerce & Insurance  
City of Kansas City  
City of Springfield  
City of Columbia  
St. Louis County Department of Justice Services  
Springfield Police Department  
St. Louis County Police Department



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