

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3342-01  
Bill No.: SB 654  
Subject: Elderly; Securities; Department of Health and Senior Services  
Type: Original  
Date: January 21, 2020

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Bill Summary: This proposal modifies provisions relating to the regulation of securities.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<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 2021</b>	<b>FY 2022</b>	<b>FY 2023</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 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</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)** assumes 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.

In response to similar legislation (HCS for HB 354) from 2019, officials from the **SOS** stated in calendar years 2017 and 2018, approximately 3 Respondents were penalized under Section 409.4-412 for a total amount of approximately \$400,000 and approximately 51 Respondents were penalized under Section 409.6-604 for a total amount of approximately \$1,672,000. The money collected is forwarded to the state treasury for the benefit of the county and township school funds in accordance with Article IX, Section 7 of the Missouri Constitution.

The Securities Division does not estimate an increase in the number of penalties imposed, but the penalties themselves would increase, so the gross amount would be higher.

**Oversight** notes the bill changes the maximum amount of civil penalties that may be assessed and that there may be an increase in the gross amount collected pursuant to Section 409.4-412 and 409.6-604. Without additional information, and since this is a maximum amount possible, Oversight will reflect a zero to unknown amount of additional penalty revenue to school districts.

ASSUMPTION (continued)

Officials from the **Department of Health and Senior Services (DHSS)** assume Section 409.610 requires the department to provide information regarding a qualified adult to the reporting qualified individual or investment advisor representative upon request, subsequent to notifying the department of potential financial exploitation of the qualified adult. The Department of Health and Senior Services (DHSS), Division of Senior and Disability Services (DSDS), Section of Adult Protective Services investigators are responsible for investigating reports of financial exploitation.

DSDS:

An Adult Protective Community Worker II (average salary \$36,170) would be responsible to provide the information requested to the qualified individual. The SIU investigates on average 100 reports of financial exploitation of this nature and anticipates a 20% increase in these types of reports. Providing requested information to the qualified individual is estimated to take 30 minutes per report. Assuming 120 reports ( $100 \times 0.20 = 20$ ;  $100 + 20 = 120$ ), it is estimated providing this information to qualified individuals will take an additional 60 hours, or 0.03 FTE ( $60 \text{ hours} \div 2,080 \text{ hours per year} = 0.03$ ) for total personal service cost of \$904.25 ( $\$36,170 \times 0.03 \times 10/12$ ) for FY21 and \$1,085.10 ( $\$36,170 \times 0.03$ ) in subsequent years.

The department anticipates being able to absorb the costs of the Adult Protective Community Worker. However, until the FY21 budget is final, the department cannot identify specific funding sources.

Section 409.615.3(3) permits the holding of disbursement or transaction for the account of a qualified adult to be extended by the Director of Department of Health and Senior Services, after notifying the commissioner of securities. With this proposed legislative change, the Department to Health and Senior Services would continue to work closely with Secretary of State, Securities Commissioner. If, during our investigation it is determined an extension is needed due to additional time is required for investigation and/or additional time is required for medical assessment and court proceedings when the qualified adult's capacity is in question, then the Department of Health and Senior Services would either continue with investigation and/or the Office of General Counsel would be responsible for guardianship/conservatorship petition through Probate Court when the department has exhausted alternative arrangements.

DSDS:

The further investigation would be the responsibility of the Adult Protective Community Worker and as described in prior section, the department anticipates being able to absorb the costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

ASSUMPTION (continued)

Also, within this subsection, DHSS would be responsible for conducting reviews of circumstances every thirty days to determine if the order extension should remain in effect. This would be the responsibility of the Adult Protective Community Worker and as described in prior section, the department anticipates being able to absorb the costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

The Office of General Counsel currently works on processing guardianship/conservatorship to file with the courts for a public administrator/guardian to be assigned by the court to help protect citizens from financial exploitation. DHSS currently has three attorneys that work on this type of requests with this being a third to a half of their workload.

It is assumed that this proposed legislation may result in additional filings, but is assumed to be part of the normal workload. If the cases result in an injunction being filed, the case would be handled by the Attorney General's Office.

The department anticipates being able to absorb these costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

**Oversight** does not have any information to the contrary. Oversight assumes that DHSS will be able to handle any potential increase of workload with existing staff and resources.

**Oversight** notes that the Department of Social Services, Office of State Courts Administrator, Department of Commerce & Insurance, and Office of Administration 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 2021 (10 Mo.)	FY 2022	FY 2023
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Local Government

FY 2021  
(10 Mo.)

FY 2022

FY 2023

**SCHOOL DISTRICTS**

Income - potential increase in penalties §409.4-412 & §409.6-604      \$0 to Unknown    \$0 to Unknown    \$0 to Unknown

**ESTIMATED NET EFFECT TO THE SCHOOL DISTRICTS**      **\$0 to Unknown**    **\$0 to Unknown**    **\$0 to Unknown**

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This act modifies provisions relating to regulation of securities.

Under current law, only qualified individuals, as defined by law, are permitted to:

- Notify authorities of the financial exploitation of senior citizens or persons with certain disabilities; or
- Refuse disbursement of funds from the account of a senior citizen or person with a certain disability.

This act modifies the definition of "qualified individual" to include broker dealers and investment advisers in addition to persons associated with a broker-dealer or investment adviser.

Current law permits a qualified individual to notify certain persons connected with a senior citizen or person with a certain disability of suspected financial exploitation of such person. This act additionally permits an investment adviser representative to make such notifications. Additionally, the Department of Health and Senior Services and the Commissioner of Securities may provide information regarding the senior citizen or person with a certain disability to the qualified individual or investment adviser representative upon request.

Current law allows a qualified individual to refuse a request for disbursement from the account of a senior citizen or person with a certain disability if the qualified individual reasonably believes that the disbursement will result in financial exploitation of the person. This act additionally permits refusal of any request for a transaction from the account of such a person.

FISCAL DESCRIPTION (continued)

The act provides that in the event of a refusal of a disbursement or transaction from the account of a senior citizen or person with a certain disability, a qualified individual shall notify the Department of Health and Senior Services and the Commissioner of Securities within two business days. Current law requires notification within three business days. Additionally, the act requires the qualified individual to send a written notice, in the manner described in the act, to the qualified adult within two business days.

The act allows the Commissioner of Securities and the Director of the Department of Health and Senior Services to enter an order extending any refusal of a disbursement or transaction for the time necessary to protect the senior citizen or person with a certain disability. Subsequent to issuing such an order, the respective agency shall conduct a review every 30 days to determine if the extending order shall remain in effect.

The act extends immunity from any civil liability under the Senior Savings Protection Act to an investment adviser representative if he or she acts in good faith and exercises reasonable care in complying with the provisions of the act.

The act requires an investment adviser to provide access, and copies of records that are relevant, to any suspected financial exploitation of a senior citizen or person with a certain disability to the Department of Health and Senior Services, the Commissioner of Securities, or law enforcement, upon request.

No later than September 1, 2021, the Commissioner of Securities is required to make available to investment advisers and investment adviser representatives training resources of the prevention and detection of financial exploitation of senior citizens and persons with certain disabilities.

This act further provides that certain federal covered securities exempt from state registration under the Securities Act of 1933 may require a notice filing by or on behalf of an issuer no later than 15 days after the first sale of the federal covered security within the state and pay a fee of \$100, with a \$50 late fee.

The Commissioner of Securities may impose a civil penalty up to \$25,000 rather than \$5,000 for each violation of the Missouri Securities Act and may impose an additional penalty of \$15,000 in certain circumstances, if the victim was an elderly or disabled person.

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 the Secretary of State  
Department of Health and Senior Services  
Department of Social Services  
Office of State Courts Administrator  
Department of Commerce & Insurance  
Office of Administration



Julie Morff  
Director  
January 21, 2020



Ross Strobe  
Assistant Director  
January 21, 2020