

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3567-02  
Bill No.: SB 647  
Subject: Accountants; Architects; Boards, Commissions, Committees and Councils;  
 Cosmetology; Counseling; Dentists; Funerals and Funeral Directors; Health Care  
 Professionals; Department of Commerce and Insurance; License, Miscellaneous;  
 Marital and Family Therapists; Optometry; Physical Therapists; Professional  
 Registration and Licensing; Psychologists  
Type: Original  
Date: February 3, 2020

Bill Summary: This proposal establishes the Fresh Start Act of 2020.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
<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>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Various DCI Funds	(Could be greater than \$396,699)	(Could be greater than \$427,962)	(Could be greater than \$432,253)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(Could be greater than \$396,699)</b>	<b>(Could be greater than \$427,962)</b>	<b>(Could be greater than \$432,253)</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>
<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>
Various DCI Funds	4 FTE	4 FTE	4 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>4 FTE</b>	<b>4 FTE</b>	<b>4 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</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### Sections 214.276 - 346.105

Officials from the **Department of Commerce and Insurance (DCI)** state that this section of the legislation removes the word "reasonably" and replaces it with the word "directly". It will take additional review and time to determine if something is "directly related" to the occupation compared to "reasonably related." The person determining that will have to know the essence of a profession and what it requires to be able to determine if the criminal conviction is directly related and whether that crime needs to go on the specific list of crimes as the statute requires. The department is estimating needing one (1) FTE attorney for this work.

#### Section 324.012 - Fresh Start Act of 2020

Officials from the **Department of Commerce and Insurance (DCI)** state this proposal requires that each state licensing authority list the categories or 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. The department estimates at least \$285,437 in additional FTE and/or legal contract costs (estimating three (3) FTE attorneys at \$70,359 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.

This bill also 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 after the licensing authority has met, but in no event more than four months after receiving the petition from the applicant. 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".

ASSUMPTION (continued)

The licensing authority may charge a fee not to exceed \$25.00 for each petition. The fiscal impact the department for petition process is unknown depending up on the number of petitions received and the extent of the work required. The department would request additional FTE and appropriation, as necessary, through the budget process.

In summary, DCI assumes a cost for this section and Sections 214.276 - 346.105 of (4 FTE at \$70,359 annually and an additional unknown cost of \$100,000 for either or both contracting and additional legal staff ) of Unknown but greater than \$396,699 in FY 2021, \$427,962 in FY 2022 and \$432,253 in FY 2023 to Various Department Funds to provide for the implementation of all of the changes in this proposal.

**Oversight** will reflect DCI's estimated need of at least 4 attorneys for this section and that DCI may or may not incur additional unknown cost of \$100,000 for either or both contracting and additional legal staff as a result of this proposal. Oversight will reflect the estimated DCI cost as (Could be greater than \$396,699) in FY 2021, (Could be greater than \$427,962) in FY 2022 and (Could be greater than \$432,253) in FY 2023.

**Oversight** will also reflect a revenue of \$117,000 per year to Various DCI Funds as a result of the \$25 petition fee.

Officials from the **Department of Health and Senior Services (DHSS) - Office of General Counsel** 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 be required to:

- Review requests for records (sunshine and/or subpoenas)
- Coordinate and advise with program staff to determine whether the Department has records responsive to requests
- Review of individual records
- Determine appropriate response
- Respond to requestor
- Draft/file motions to quash subpoenas when necessary
- Possible referrals to the Attorney General's Office
- Assist in the preparation of the documentation regarding each petition that must be done within thirty days of receiving the petition.

ASSUMPTION (continued)

**Department of Health and Senior Services (DHSS) - Division of Regulation and Licensure (DRL)** assumes this section of the proposed legislation requires state licensing authorities to list the specific criminal convictions that could disqualify an applicant from receiving a license. This requirement falls within the normal ebb and flow for DRL.

The proposed legislation 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 FY21 budget is final, the department cannot identify specific funding sources.

**Oversight** notes that the above mentioned agency has stated the cost of the proposal could be absorbed. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for this agency.

Section 344.030.2(1) - Board of Nursing Home Administrators

Officials from the **Department of Health and Senior Services (DHSS) - Division of Regulation and Licensure (DRL)** state the proposed legislation removes the Board of Nursing Home Administrators' (BNHA) ability to deny licenses based on moral turpitude. This will require BNHA to promulgate new rules for the program. It is assumed it will take the BNHA's Principal Assistant Board/Commission (salary \$53,208) approximately 16 hours to make the required changes to state rules. Based on 2,080 working hours per year, this would require 0.01 FTE to assume these duties ( $16 \text{ hours} \div 2,080 \text{ hours per year} = 0.01$ ) for a total personal service cost of \$532 ( $\$53,208 \times 0.01$ ).

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

**Oversight** notes that the above mentioned agency has stated the cost of the proposal could be absorbed. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for that agency.

ASSUMPTION (continued)

Bill as a whole:

Officials from the **Office of the State Treasurer**, the **Department of Elementary and Secondary Education**, the **Office of Prosecution Services**, the **Office of Administration - Administrative Hearing Commission**, the **Department of Public Safety - Missouri Gaming Commission**, the **Department of Corrections**, the **Department of Revenue**, the **Department of Natural Resources**, **Department of Public Safety - Missouri Highway Patrol**, the **Department of Agriculture**, the **Office of the State Courts Administrator**, the **Office of the State Public Defender**, the **Office of Administration** and the **Department of Transportation** each assume the proposal will have no fiscal impact on their respective organizations.

**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 2021 (10 Mo.)	FY 2022	FY 2023
<b>VARIOUS DCI FUNDS</b>			
<u>Revenue - DCI</u> p. 4 \$25 petition fee (§ 324.012)	\$117,000	\$117,000	\$117,000
<u>Cost - DCI</u> (§§ 214.276 -346.105 & § 324.012 ) p. 4			
Salaries	(\$234,531)	(\$284,252)	(\$287,094)
Fringe Benefits	(\$116,288)	(\$140,480)	(\$141,424)
Equipment and Expense	(\$62,880)	(\$20,230)	(\$20,735)
Other Fund Cost (Additional FTE or Legal Contract Cost for listing criminal convictions	\$0 or (Unknown greater than \$100,000)	\$0 or (Unknown greater than \$100,000)	\$0 or (Unknown greater than \$100,000)
<u>Total Cost - DCI</u> (§§ 214.276 -346.105 & § 324.012 ) p. 4	(Could be greater than \$513,699)	(Could be greater than \$544,962)	(Could be greater than \$549,253)
FTE Change - DCI (§§ 214.276 - 346.105 & § 324.012 )	4 FTE	4 FTE	4 FTE
<b>ESTIMATED NET EFFECT TO VARIOUS DCI FUNDS</b>	<b>(Could be greater than <u>\$396,699</u>)</b>	<b>(Could be greater than <u>\$427,962</u>)</b>	<b>(Could be greater than <u>\$432,253</u>)</b>
Estimated Net FTE Change to the General Revenue Fund	4 FTE	4 FTE	4 FTE
<u>FISCAL IMPACT - Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small businesses that require professional licenses could be impacted by this proposal.

## FISCAL DESCRIPTION

This act establishes the Fresh Start Act of 2020.

Beginning January 1, 2021, no person shall be disqualified by a state licensing authority from pursuing or practicing in any occupation for which a license is required solely or in part because of a prior conviction of a crime in this state or another state, unless the crime is directly related to the duties and responsibilities for the licensed occupation.

Prior to January 1, 2021, all state licensing authorities shall list the specific criminal convictions in this state that could disqualify an applicant from receiving a license. Only criminal convictions that are directly related to the duties and responsibilities for the licensed occupation shall be listed. Licensing authorities are prohibited from using vague or generic terms, and from considering arrests without a subsequent conviction. The licensing authority shall determine whether an applicant with a criminal conviction will be denied a license based on several factors set forth in the act.

Beginning August 28, 2020, applicants for licensure who have pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of any offenses set forth in the act may be considered by licensing authorities to have committed a criminal offense that directly relates to the duties and responsibilities of a licensed profession.

An individual with a criminal record may petition a licensing authority at any time for a determination of whether they will be disqualified from receiving a license. The licensing authority is required to inform the individual of his or her standing within 30 days of receiving the petition, and may charge a fee, no greater than \$25, to recoup the costs.

If a licensing authority denies an individual a license solely or in part because of the individual's prior criminal conviction, the licensing authority shall notify the individual in writing of the reasons for the denial, that the individual has the right to a hearing to challenge the decision, the earliest date the person may reapply for a license, and that evidence of rehabilitation may be considered upon reapplication.

If the licensing authority grants a license to an individual, such decision shall be binding unless such individual commits a subsequent crime that directly relates to the occupation for which the individual is licensed, or upon discovery that such person failed to disclose information regarding a prior conviction in the license petition process.



FISCAL DESCRIPTION (continued)

Any written determination by the licensing authority that an applicant's criminal conviction is a specifically listed disqualifying conviction and is directly related to the duties and responsibilities for the licensed occupation shall be documented with written findings for each reason by clear and convincing evidence sufficient for a reviewing court. In any administrative hearing or civil litigation, the licensing authority shall carry the burden of proof on the question of whether the applicant's criminal conviction directly relates to the occupation for which the license was sought.

This act shall apply to any profession for which an occupational license is issued in this state, excluding peace officers or other law enforcement personnel, podiatrists, dentists, physicians and surgeons, pharmacists, nurses, or any persons under the supervision or jurisdiction of the Director of Finance, and including any new occupational license created by a state licensing authority after August 28, 2020. Political subdivisions are prohibited from creating any new occupational licenses after August 28, 2020.

Any licensing board participating in a compact shall submit any information regarding a licensee's conviction of any criminal offense, regardless of whether or not such offense is directly related to the duties and responsibilities of the profession, to the relevant coordinated licensure information system.

Provisions of law relating to the denial of licensure, denial of license renewal, or revocation of a certificate of registration for any offense reasonably related to the qualifications, functions or duties of the occupation, an essential element of which is fraud, dishonesty, an act of violence or moral turpitude are repealed for the following occupations and professions, and a requirement that no person applying for such licensure have committed an offense directly related to the duties and responsibilities of the occupation as set forth in the act


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 Commerce and Insurance  
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  
Office of Administration  
Department of Corrections  
Office of the State Courts Administrator  
Office of the State Public Defender  
Office of Prosecution Services  
Office of the State Treasurer  
Department of Public Safety  
    Missouri Gaming Commission  
Department of Elementary and Secondary Education



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