

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3567-04
Bill No.: SCS for 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; Licenses, Miscellaneous;
 Marital and Family Therapists; Optometry; Physical Therapists; Professional
 Registration and Licensing; Psychologists
Type: Original
Date: March 3, 2020

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

FISCAL SUMMARY

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

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
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)
Total Estimated Net Effect on <u>Other</u> State Funds	(Could be greater than \$396,699)	(Could be greater than \$427,962)	(Could be greater than \$432,253)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 9 pages.

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

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Various DCI Funds	4 FTE	4 FTE	4 FTE
Total Estimated Net Effect on FTE	4 FTE	4 FTE	4 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 2021	FY 2022	FY 2023
Local Government	\$0	\$0	\$0

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)** the proposed legislation establishes the Fresh Start Act which prohibits licensing authorities from disqualifying an applicant for an occupational license based on a prior conviction of a crime, unless the crime directly relates to the duties of the occupation. This act also 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 duties of the Department of Health and Senior Services (DHSS), Division of Regulation and Licensure (DRL) and will provide no fiscal impact.

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.

ASSUMPTION (continued)

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 hours ÷ 2,080 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.

Bill as a whole:

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

In response to a previous version, officials from the **Department of Revenue** assumed the proposal would have no fiscal impact on their organization.

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
VARIOUS DCI FUNDS			
<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
ESTIMATED NET EFFECT TO VARIOUS DCI FUNDS	(Could be greater than <u>\$396,699</u>)	(Could be greater than <u>\$427,962</u>)	(Could be greater than <u>\$432,253</u>)
Estimated Net FTE Change to Various DCI Funds	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.

If an individual is charged with any of the crimes set forth in the act and is convicted, pleads guilty to, or is found guilty of a lesser included offense, and is sentenced to a period of incarceration, such conviction shall only be considered by state licensing authorities as a criminal offense that directly relates to the duties and responsibilities of a licensed profession for five years.

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, accountants, 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.

Current law provides that all individuals may engage in the occupation of their choice, free from unreasonable government regulation, and that the state shall not impose a substantial burden on an individual's pursuit of his or her occupation unless there is a reasonable interest for the state to protect the general welfare.

Current law sets forth when an occupation or profession shall be regulated, and how such regulation shall be implemented.

GUIDELINES FOR REGULATION OF CERTAIN OCCUPATIONS (Section 324.047)

This act provides that nothing in current law regarding prospective regulation of professions shall be construed to change any requirement for an individual to hold current private certification as a condition of licensure or renewal of licensure, and shall not require a private certification organization to grant or deny private certification to any individual.

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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March 3, 2020



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