

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4098S.02I
Bill No.: SB 778
Subject: Abortion; Civil Procedure; Civil Penalties; Health Care Professionals
Type: Original
Date: March 8, 2022

Bill Summary: This proposal prohibits abortions following the detection of a fetal heartbeat and adds a private cause of action.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Federal Funds*	\$0 to (\$166,000,000)	\$0 to (\$166,000,000)	\$0 to (\$166,000,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 to (\$166,000,000)	\$0 to (\$166,000,000)	\$0 to (\$166,000,000)

*This represents a potential withholding of federal funding if Missouri is determined to be out of compliance. The actual fiscal impact (if any) would depend upon decisions by the courts and/or actions taken by the Federal government.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on FTE	0	0	0

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§188.052, 188.909, 188.910, 188.911, and 188.912 – Prohibits abortions after detection of fetal heartbeat and adds private cause of action

Officials from the **Department of Health and Senior Services (DHSS)** state the proposed legislation would require abortion reports to include the time, date, method, results of the test performed to detect fetal heartbeat and that abortion shall not knowingly be performed unless the physician has determined whether the unborn child has a detectable fetal heartbeat.

Pursuant to §§188.027.4 and 188.027.10, RSMo, the DHSS, along with the Department of Social Services (DSS), publishes two publications, the Informed Consent Checklist and Missouri's Informed Consent Booklet. These are both available in English and Spanish.

<https://health.mo.gov/living/families/womenshealth/pregnancyassistance/forms.php>

The revision of the materials in English would take approximately 40 hours of staff time by a Public Health Program Supervisor (\$58,689 average annual salary in the Division of Community and Public Health as of January 1, 2021). This would amount to a staff time cost of \$1,128 (\$28.21 hourly salary x 40, rounded down). The DHSS anticipates being able to absorb these costs. However, until the FY23 budget is final, the department cannot identify specific funding sources.

Revising the materials in Spanish would require an external translator. The rate for translation is per word. It would require approximately 200 words per document. 400 words x \$.20/word=\$80 The revised materials would need to also be printed for use by providers. There are currently approximately 175 items of each material available at the warehouse. It is estimated that 200 items would need to be printed to replace each of the four revised materials. The cost of printing the revised materials is incurred by the DSS and therefore has no fiscal impact on DHSS.

Oversight does not have any information to the contrary. Oversight assumes DHSS has sufficient staff and resources available to absorb the additional duties required by this proposal with existing resources and will present no fiscal impact for DHSS for this proposal.

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, incest, or when necessary to save the life of the mother. Under current federal law, state Medicaid programs are not allowed 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. See Public Law 116-260 (2020), which was extended by Public Law 117-43 (2021) and Public Law 117-70 (2021). In 1994, the United States 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 DSS is not certain how the Centers for Medicare & Medicaid Services (CMS) would respond to the language. Therefore, the cost is presented as a range, from \$0 to approximately 2% (\$166 million) of the total Title XIX federal claim for the last four quarters.

Oversight does not have any information to the contrary. Oversight will present DSS' potential loss of federal funds as a range of \$0 to \$166M annually.

Officials from the **Attorney General's Office**, the **Department of Commerce and Insurance**, the **Department of Corrections**, the **City of Kansas City**, the **City of Springfield**, the **Missouri Office of Prosecution Services** and the **Office of the State Courts Administrator** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
FEDERAL FUNDS			
<u>Loss</u> – DSS (§§188.052 to 188.912) – reduction in federal funds received if deemed out of compliance	<u>\$0 to</u> (\$166,000,000)	<u>\$0 to</u> (\$166,000,000)	<u>\$0 to</u> (\$166,000,000)
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0 to</u> <u>(\$166,000,000)</u>	<u>\$0 to</u> <u>(\$166,000,000)</u>	<u>\$0 to</u> <u>(\$166,000,000)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

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

FISCAL DESCRIPTION

This act requires a physician to perform a fetal heartbeat detection test prior to performing or inducing an abortion, except in cases of medical emergency. A physician shall not perform or induce an abortion if a fetal heartbeat has been detected. The physician shall record in the pregnant woman's medical record the estimated gestational age of the unborn child, the method used to estimate the gestational age, the test used to detect the fetal heartbeat, and the date, time, and results of the test. If an abortion is performed or induced without first performing the test because of a medical emergency, the physician shall record that information in the pregnant woman's medical record and in the abortion report submitted to the Department of Health and Senior Services.

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

Attorney General's Office

Department of Commerce and Insurance

Department of Health and Senior Services

Department of Corrections

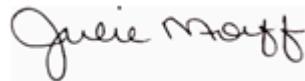
Department of Social Services

City of Kansas City

City of Springfield

Missouri Office of Prosecution Services

Office of the State Courts Administrator



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