

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3269H.02C
 Bill No.: HCS for HB 1641
 Subject: Health, Public; Employees - Employers; Liability
 Type: Original
 Date: February 16, 2022

Bill Summary: This proposal creates provisions relating to employer responsibilities associated with vaccine mandates.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue Fund*	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on General Revenue	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

*Oversight notes this proposal could possibly create exposure for the state government and/or local political subdivisions.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Other State Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Legal Expense Fund*	\$0	\$0	\$0
Colleges and Universities	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

Numbers within parentheses: () indicate costs or losses.

*LEF will net to zero.

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

*The potential “(Unknown)” fiscal impact to various state agencies could be quite substantial, depending upon decisions by the courts and actions taken by the federal government.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
All State and Federal	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Total Estimated Net Effect on FTE	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

- 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 Political Subdivisions	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Local Government	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration (OA)** assume the proposal has the potential to increase costs to the state Legal Expense Fund (LEF) for actions alleging violation by a state employee in connection with their official duties on behalf of the state. The amount of the potential costs resulting from this proposal cannot be reasonably estimated as this language creates new legal standards, subject to judicial interpretation, and there is no readily available information that could assist in forming a rational basis for estimating costs. In addition, 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 LEF, 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 that officials from OA assumed this provision may prompt causes of action against various state agencies throughout the state. If the state is found liable, there may be additional payouts from the State Legal Expense Fund.

Therefore, **Oversight** will show a net fiscal impact to the Legal Expense Fund as \$0 due to transfers in from the General Revenue Fund, Federal Funds, and Other State Funds offsetting additional liability payments.

Officials from the **Department of Health and Senior Services (DHSS)** and the **Department of Public Safety – Missouri Veterans Commission (DPS-MVC)** both defer to the OA for the potential fiscal impact of this proposal.

Officials from the **Department of Mental Health (DMH)** assume the provision does not define how causation from immunization to injury will be traced. Further, the provision does not identify which entity is responsible for determining whether an injury was caused by an immunization, which could implicate workers compensation. Further clarification is needed in the proposed language to address these issues.

In addition, this requirement may put some Department of Mental Health (DMH) facilities and agencies at odds with federal requirements for licensure and/or Centers of Medicare & Medicaid funding. Due to the uncertainty surrounding a federal vaccination mandate, DMH cannot

calculate a fiscal impact on the Department at this stage; therefore, the fiscal impact to the Department is unknown at this time.

Oversight notes the officials from the DMH assume the proposal will have a direct fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, **Oversight** will reflect a potential Unknown impact to a Federal Funds in the fiscal note.

Officials from the **Missouri Department of Agriculture (MDA)** assume the vaccinations are currently not mandated; therefore, there will not be a fiscal impact to MDA.

Oversight notes officials from the MDA assume the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, **Oversight** will reflect a zero impact in the fiscal note for above agency.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume the proposal will have no fiscal impact on their respective organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note.

In response to the previous version of this proposal, officials from the **University of Missouri System** noted:

This proposal would create a new potential source of liability for the University, however, it is not possible to identify a significant fiscal impact at this time.

Officials from the **University of Central Missouri** assume the proposal will have direct indeterminate fiscal impact due to uncertainty of application.

Oversight notes that this provision may prompt causes of action against the colleges and universities throughout Missouri for violations of this proposal. If the state is found liable, there may be additional payouts from the State Legal Expense Fund. However, colleges and universities may only access the State Legal Expense Fund under limited circumstances.

Therefore, **Oversight** will range the reduction to the Legal Expense Fund from \$0 (does not increase litigation) to an Unknown cost (increased claims related to unlawful practices) for the colleges and universities throughout Missouri in the fiscal note.

Officials from the **City of Kansas City** assume the proposal could have a negative fiscal impact on the City of Kansas City, Missouri, in an indeterminate amount if it increases Kansas City's exposure to liability.

Oversight notes that this provision may prompt causes of action against various political subdivisions throughout the Missouri for violations of this proposal. If the organizations is found liable, there may be additional payouts from local political subdivision funds.

Therefore, **Oversight** will range the effect on local political subdivisions from \$0 (does not increase litigation) to an Unknown cost (increased claims related to unlawful practices) for the various political subdivisions in the fiscal note.

Officials from the **Attorney General's Office, Office of Administration – Administrative Hearing Commission, Office of Administration – Budget & Planning, Department of Economic Development, Department of Social Services, Department of Elementary and Secondary Education, Department of Labor and Industrial Relations, Higher Education and Workforce Development, Department of Natural Resources, Department of Corrections, Department of Health and Senior Services, Department of Public Safety – (Alcohol and Tobacco Control, Capital Police, Director's Office, Missouri Veterans Commission, Highway Patrol, Gaming Commission, National Guard, State Emergency Agency), Office of the Governor, Office of the State Treasurer, Missouri Office of Prosecution Services, Missouri Consolidated Health Care Plan, Missouri Higher Education Loan Authority, Missouri State Employee's Retirement System, Office of the State Courts Administrator, Missouri Department of Transportation, Missouri Department of Conservation, Missouri Department of Transportation – Patrol Employee's Retirement System, Missouri House of Representatives, Joint Committee on Administrative Rules, Legislative Research, Oversight Division, Missouri Senate, and the State Tax Commission** 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.

Officials from the **City of O'Fallon, City of Springfield, Saint Louis County Police Department, and the Phelps County Sheriff** each assume the proposal will have no fiscal impact on their respective organizations. Therefore, **Oversight** will reflect a zero impact in the fiscal note for the respective organizations.

Rule Promulgation

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** note 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 its 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 SOS is provided with core funding to handle a certain amount of activity each year. **Oversight** assumes SOS could absorb the costs related to this proposal. Therefore, Oversight will reflect zero fiscal impact in the fiscal note for above agency.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims (p.3)	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT TO GENERAL REVENUE FUND	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
OTHER STATE FUNDS			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims (p.3)	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT TO OTHER STATE FUNDS	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
FEDERAL FUNDS			
<u>Loss of Revenue</u> - DMH – Medicaid & Medicare Funds (p.4)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<u>Loss of Revenue</u> – University of Central Missouri (p.4)	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
<u>Cost</u> - Potential increase in LEF claims (p.3)	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT TO FEDERAL FUNDS	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
<u>FISCAL IMPACT – State Government</u> (continued)	FY 2023 (10 Mo.)	FY 2024	FY 2025

LEGAL EXPENSE FUND (0692)			
<u>Transfer In</u> - from GR, Federal, and Other State Funds Potential increase in claims	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Transfer Out</u> - payment of discrimination claims	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT TO THE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
COLLEGES AND UNIVERSITIES			
<u>Cost</u> - Colleges and Universities Potential increase in claims (p.3,4)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
LOCAL POLITICAL SUBDIVISIONS			
<u>Cost</u> Potential increase in claims	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>

FISCAL IMPACT – Small Business

Small businesses contracting with above agencies, colleges, universities, and political subdivisions will be required to comply with revised sections. If a small business fails to comply,

they could be held liable for those actions as a result of this proposal.

FISCAL DESCRIPTION

This bill states that an employer that requires an employee to undergo or provide proof of receiving a vaccination against any disease as a condition of employment or continued employment shall exempt an employee who in writing claims a religious or conscientious objection, provides evidence of acquired immunity to the disease, or provides a written statement from a physicians that the vaccination is medically contraindicated for the employee. This bill makes an employer liable for damages or injury arising from the required vaccination.

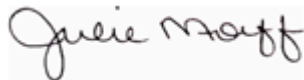
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Department of Labor and Industrial Relations
Office of Administration – Administrative Hearing Commission
Office of Administration – Budget & Planning
Department of Economic Development
Department of Elementary and Secondary Education
Higher Education and Workforce Development
Department of Natural Resources
Department of Corrections
Department of Public Safety –
 ➤ Alcohol and Tobacco Control
 ➤ Capital Police
 ➤ Director's Office
 ➤ Gaming Commission
 ➤ National Guard
 ➤ Missouri Veterans Commission
 ➤ Highway Patrol
 ➤ State Emergency Agency
Missouri Department of Conservation
Missouri Department of Transportation
Missouri Department of Transportation – Patrol Employee's Retirement System
Office of the Governor
Office of the State Treasurer
Missouri Office of Prosecution Services
Missouri Consolidated Health Care Plan
Missouri Higher Education Loan Authority
Missouri State Employee's Retirement System
Department of Health and Senior Services

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Department of Social Services
Office of the State Courts Administrator
Missouri House of Representatives
Joint Committee on Administrative Rules
Legislative Research
Oversight Division
Missouri Senate
State Tax Commission
Office of the Secretary of State
University of Central Missouri
City of O'Fallon
City of Springfield
Saint Louis County Police Department
Phelps County Sheriff



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