

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0337-02
Bill No.: HCS for HB 28
Subject: Abortion; Drugs and Controlled Substances; Health Care; Pharmacy
Type: Original
Date: March 14, 2011

Bill Summary: This legislation specifies that no pharmacy can be required to perform, assist, recommend, refer to, or participate in any act or service resulting in an abortion and will be immune from liability for refusing to do so. This legislation establishes the Abortion-inducing Drugs Safety Act.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	(Less than \$200,000)	(Less than \$200,000)	(Less than \$200,000)
Total Estimated Net Effect on General Revenue Fund	(Less than \$200,000)	(Less than \$200,000)	(Less than \$200,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on FTE	0	0	0

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Sections 188.033 & 338.575:

Officials from the **Department of Health and Senior Services, Office of Prosecution Services, Office of the State Courts Administrator, Office of the State Public Defender, Missouri State Highway Patrol** and the **Department of Insurance, Financial Institutions & Professional Registration** each assume the proposal would have no fiscal impact on their respective agencies.

Officials from the **Bates County Memorial Hospital, Cedar County Memorial Hospital, Cooper County Memorial Hospital, Putnam County Memorial Hospital, Washington County Memorial Hospital** and the **Excelsior Springs Medical Center** each have not responded to Oversight's request for fiscal information.

Section 188.033:

Officials from the **Department of Social Services** state in accordance with Public Law 105-798 (1997) relating to abortions, Medicaid payment is only available for abortions performed when the life of the woman would be endangered if the fetus were carried to term or that the pregnancy is the result of an act of rape or incest.

The United States District Court case of the Department of Social Services vs. the Secretary of Health and Human Services states "if the State of Missouri chooses to accept federal funds pursuant to Title XIX, it must provide funding for abortions terminating pregnancies resulting from rape and incest as well as those necessary to save the life of the pregnant woman".

The MO HealthNet Division assumes there will be no change to the MO HealthNet program therefore, there is no fiscal impact.

Officials from the **Office of the Attorney General (AGO)** assume that this proposal could be subject of litigation. AGO assumes that costs are unknown, but assume less than \$100,000.

In response to a similar proposal from this year (HB 328), officials from the **Department of Corrections (DOC)** state currently, the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in

ASSUMPTION (continued)

commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through incarceration (FY10 average of \$16.397 per offender, per day, or an annual cost of \$5,985 per inmate) or through supervision provided by the Board of Probation and Parole (FY10 average of \$3.92 per offender, per day or an annual cost of \$1,431 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the Department. Seventeen (17) persons would have to be incarcerated per each fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

Section 338.575:

Officials from the **Office of the Attorney General (AGO)** assume that implementation of this proposal will create no fiscal impact for this office. However, because the AGO is responsible for defending such legislation in constitutionality claims, AGO assumes that the nature of these provisions could create a fiscal impact. As a result, AGO assumes costs are unknown.

Oversight assumes, because the potential for defending such legislation is speculative, that the AGO will not incur significant costs related to this proposal. If a fiscal impact were to result, the AGO may request additional funding through the appropriations process.

Officials from the **Department of Social Services** assume there is no fiscal impact to the Department. Current policy requires MO HealthNet providers to comply with all applicable laws, policies, and regulations of Missouri and the federal government. In addition, the MC+ Managed Care contracts include language which prohibits a health plan from requiring a provider to perform a service contrary to the provider's conscience and allows the provider to make a referral to another health care provider licensed to provide the appropriate care.

In response to a previous version of this proposal, officials from the **Department of Corrections (DOC)** assume the long-range effect of this proposal for the DOC is unknown. However, for fiscal note purposes only, no fiscal impact for FY12, FY13, and FY14.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
GENERAL REVENUE FUND			
<u>Costs - Office of the Attorney General</u>			
Litigation Costs	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
<u>Costs - Department of Corrections</u>			
Incarceration/probation costs	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Less than \$200,000)</u>	<u>(Less than \$200,000)</u>	<u>(Less than \$200,000)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
	<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

Section 188.033:

The proposed legislation establishes the Abortion-inducing Drugs Safety Act which places restrictions on abortion-inducing drugs. Any person who is not a physician is prohibited from knowingly prescribing or administering RU-486 or any other abortion-inducing drug. RU-486 or any other abortion-inducing drug can only be prescribed by a physician who at least 24 hours prior to the administration of the drug:

- (1) Complies with all other legal requirements prior to performing or inducing an abortion;
- (2) Performs a physical examination of the patient;

FISCAL DESCRIPTION (continued)

- (3) Documents in the patient's medical record the gestational age of the fetus and that there is no ectopic pregnancy;
- (4) Provides the patient with a copy of the United States Food and Drug Administration (FDA) approved label for the drug or drugs used to induce the abortion; and
- (5) Gives an oral and written warning if the drug used to induce the abortion is not approved by the FDA.

RU-486 or any other abortion-inducing drug can only be administered in a hospital or abortion facility. The abortion facility must also be licensed as an ambulatory surgical center if a specified number of abortions per month are induced at the facility. The drug can only be administered by the prescribing physician or another physician acting under the prescribing physician's authority and who is in the physical presence of the patient or by the patient herself at the direction of and while in the physical presence of the physician. A physician is prohibited from prescribing or administering RU-486 or any other abortion-inducing drug unless he or she has clinical privileges which allow the physician to perform surgeries at a hospital offering obstetrical or gynecological care that is within 30 miles of the location where the abortion is being induced.

If a patient who was administered RU-486 or any other abortion-inducing drug decides to carry her unborn child to term before the abortion is completed, the patient must be immediately referred to another physician to receive medical assistance for herself and her unborn child. A physician who prescribes or administers RU-486 or any other abortion-inducing drug must obtain in addition to all other medical malpractice requirements a tail or occurrence-based insurance policy of at least \$3 million per occurrence and \$9 million in the aggregate per year for damages for the personal injury to or death of a child who is born alive. Any person who is not a physician who prescribes or administers RU-486 or any other abortion-inducing drug will be guilty of a class C felony; except that, if prescribed or administered without the knowledge or consent of the patient, he or she will be guilty of a class B felony. A physician who violates any other provision of the act will be guilty of a class A misdemeanor.

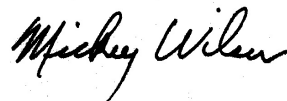
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General
Office of the State Courts Administrator
Department of Insurance, Financial Institutions and Professional Registration
Department of Corrections
Department of Health and Senior Services
Department of Social Services
Office of the State Public Defender
Office of Prosecution Services
Missouri State Highway Patrol

Not Responding:

Bates County Memorial Hospital
Cedar County Memorial Hospital
Cooper County Memorial Hospital
Putnam County Memorial Hospital
Washington County Memorial Hospital
Excelsior Springs Medical Center



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Director
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