

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4832-02
Bill No.: HCS for HJR 62
Subject: Constitutional Amendments; Health Care
Type: Original
Date: March 26, 2014

Bill Summary: This proposal proposes a constitutional amendment specifying that each citizen has an inherent liberty that includes being able to make decisions regarding lawful health care related services or products.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	\$0 or (Unknown, could exceed \$7,100,000)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on General Revenue Fund	\$0 or (Unknown, could exceed \$7,100,000)	\$0 or (Unknown)	\$0 or (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Insurance Dedicated	\$0 or Unknown to (Unknown)	\$0 or Unknown to (Unknown)	\$0 or Unknown to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 or Unknown to (Unknown)	\$0 or Unknown to (Unknown)	\$0 or Unknown to (Unknown)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Federal*	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

* Income, savings, expenditures and losses net to \$0.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
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 2015	FY 2016	FY 2017
Local Government*	\$0	\$0	\$0

* Possible Transfers-in and expenses would net to \$0.

FISCAL ANALYSIS

ASSUMPTION

In response to the previous version of this proposal, officials from the **Office of Secretary of State (SOS) - Elections Division** stated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Joint Resolutions proposing a constitutional amendment are submitted to a vote of the people at the next general election. Article XII section 2(b) of the Missouri Constitution authorizes the governor to order a special election for constitutional amendments referred to the people. If a special election is called to submit a Joint Resolution to a vote of the people, section 115.063.2, RSMo requires the state to pay the costs. The cost of the special election has been estimated to be \$7.1 million based on the cost of the 2012 Presidential Preference Primary. This figure was determined through analyzing and totaling expense reports from the 2012 Presidential Preference Primary received from local election authorities.

The Secretary of State's office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. The Secretary of State's office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.3 million historically appropriated in odd numbered fiscal years and \$100,000 appropriated in even numbered fiscal years to meet these requirements. The appropriation has historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2013, at the August and November elections, there were 5 statewide Constitutional Amendments or ballot propositions that cost \$2.17 million to publish (an average of \$434,000 per issue). Therefore, the Secretary of State's office assumes, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. However, because these requirements are mandatory, we reserve the right to request funding to meet the cost of our publishing requirements if the Governor and the General Assembly change the amount or eliminate the estimated nature of our appropriation.

Oversight has reflected in this fiscal note, the state potentially reimbursing local political subdivisions the cost of having this joint resolution voted on during a special election in fiscal year 2015. This reflects the decision made by the Joint Committee on Legislative Research, that the cost of the elections should be shown in the fiscal note. The next scheduled general election is in November 2014 (FY 2015). It is assumed the subject within this proposal could be on that

ASSUMPTION (continued)

ballot; however, it could also be on a special election called for by the Governor. Therefore, Oversight will reflect a potential election cost reimbursement to local political subdivisions in FY 2015.

In response to the previous version of this proposal, officials from the **SOS - Rules Division** stated many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The Secretary of State's office 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 \$2,500. The SOS recognizes this is a small amount and does not expect that additional funding would be required to meet these costs. However, it is also recognized 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 within 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.

Officials from the **Department of Mental Health (DMH)** state the proposed amendment would declare that no government official shall have authority to compel any person, employer or health care provider to participate in any health care system, to purchase any specific health care services or products, purchase health care services in general, or impose any penalty, tax, fee or levy for choosing not to participate or purchase such products. As provided for in Section A of the Missouri Constitution, Section 35.1, this proposed language would conflict with current legal requirements.

Under the Missouri Constitution, Article IV, Section 37, and several Missouri statutory authorities, the department is obligated to provide treatment and care for persons suffering from mental illness, among other things. Certain criminal offenders and sexually violent predators are required by statute or court order to be held in the custody of the department and to receive treatment. The department is also required to provide care to individuals who are involuntarily civilly committed. Moreover, the proposal would conflict with treatment mandates from mental health courts and drug courts.

In addition, the proposed language establishes additional authority for litigation related to the federal Patient Protection and Affordable Care Act. Potential legal challenges under the federal and Missouri state constitutions would result in increased public expenditures to litigate cases filed in federal and state courts. Challenges may include constitutional claims.

ASSUMPTION (continued)

The proposal also includes language providing that no governmental official or agency may make a citizen's right to offer or accept direct payment for health care services subject to any penalty, tax, fee or levy, or dictate the mode or content of lawful health care services or products offered.

In addition, the DMH sliding fee scale charges and Medicaid co-pays could be construed as a mandatory fee for direct payment for health care services.

Further, the proposal may prohibit the DMH from seeking grants or other funds (including funds from the federal government), or from participating in activities available under the federal Patient Protection and Affordable Care Act.

There appears to be unknown, but significant, legal and fiscal impacts arising from this proposal. DMH assumes the fiscal impact is a cost of unknown, greater than \$100,000 annually.

Officials from the **Department of Social Services (DSS) - MO HealthNet Division (MHD)** state the fiscal impact is unknown and is contingent on potential future actions of the federal government.

Oversight assumes the DMH and DSS will each have unknown increases in program expenditures as potential recipients of health services provided by the state will no longer be required to enroll in programs or pay fees, taxes, or penalties for not participating in a program. Oversight assumes potential litigation costs to be speculative and is not including those potential costs in the fiscal note.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state this resolution proposes a constitutional amendment specifying that each citizen has an inherent liberty that includes being able to make decisions regarding lawful health-care related services or products.

This proposal will have an unknown fiscal impact to the DIFP.

Oversight will, for fiscal note purposes, show potential impacts as “0 or” based on the assumption that if this proposal passes, it will be put to a vote of the people. With the exception of the potential costs of the SOS for a special election, any impact incurred by the state will be dependent on passage of the proposal by the vote of the people.

ASSUMPTION (continued)

Officials from the **Department of Public Safety - Missouri State Highway Patrol** defer to the Missouri Department of Transportation Employee Benefits Section for response on behalf of the Highway Patrol. Please see their fiscal note for the potential fiscal impact of this proposal.

Officials from the **Office of State Courts Administrator**, the **Department of Health and Senior Services**, the **Department of Revenue**, the **Missouri Department of Transportation**, the **Missouri Consolidated Health Care Plan**, the **Missouri Department of Conservation**, and the **Office of Administration** each assume the proposal would not fiscally impact their respective agencies.

Officials from the **Office of Attorney General** did not respond to **Oversight's** request for a statement of fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
GENERAL REVENUE FUND			
<u>Costs - DMH (Section 35)</u>			
Increase in program costs	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs - DSS-MHD (Section 35)</u>			
Increase in program costs	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Transfer-out - SOS</u>			
Reimbursement of local election authority election costs	<u>\$0 or (More than \$7,100,000)</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND			
	<u>\$0 or (Unknown, could exceed \$7,100,000)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
INSURANCE DEDICATED FUND			
<u>Costs - DIFP</u>			
Change in insurance services and products	<u>\$0 or Unknown to (Unknown)</u>	<u>\$0 or Unknown to (Unknown)</u>	<u>\$0 or Unknown to (Unknown)</u>
ESTIMATED NET EFFECT ON THE INSURANCE DEDICATED FUND	<u>\$0 or Unknown to (Unknown)</u>	<u>\$0 or Unknown to (Unknown)</u>	<u>\$0 or Unknown to (Unknown)</u>
FEDERAL FUNDS			
<u>Income and Savings - DMH and DSS-MHD (Section 35)</u>			
Change in income or program savings resulting from enactment of this proposal	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Costs and Losses - DMH and DSS-MHD (Section 35)</u>			
Change in program expenditure reimbursements	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
LOCAL ELECTION AUTHORITIES			
<u>Transfer-In</u> - Local Election Authorities			
Reimbursement of election costs by the State for a special election	\$0 or More than \$7,100,000	\$0	\$0
<u>Costs</u> - Local Election Authorities			
Special election	<u>\$0 or (More than \$7,100,000)</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT ON LOCAL ELECTION AUTHORITIES	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal may directly impact small business health care providers. The potential impact is unknown.

FISCAL DESCRIPTION

Upon voter approval, this proposed constitutional amendment specifies that each citizen has an inherent liberty that includes the autonomy to make decisions regarding lawful health care-related services or products and payment for those services or products. No government official or agency will have any authority to compel any person, employer, or health care provider to: (1) Participate in a health care system; (2) Purchase any specific or general health care services or products; (3) Be penalized for not participating in a health care system or not purchasing products; (4) Make a citizen's right to offer or accept direct payment for lawful health care services subject to any penalty, tax, fee, or levy; or (5) Dictate the mode or content of lawful health care services or products offered.

These provisions cannot prevent the state's courts from enforcing contracts or prevent the General Assembly from establishing laws that prohibit certain dangerous health care services, impose reasonably uniform regulation of the health insurance industry, or impose or collect uniformly imposed taxes for funding public health care programs if all the laws are consistent with all other constitutional provisions.

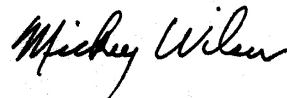
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of State Courts Administrator
Department of Insurance, Financial Institutions and Professional Registration
Department of Mental Health
Department of Health and Senior Services
Department of Revenue
Department of Social Services
Missouri Department of Transportation
Department of Public Safety -
 Missouri State Highway Patrol
Missouri Consolidated Health Care Plan
Missouri Department of Conservation
Office of Administration
Office of Secretary of State

Not Responding:

Office of Attorney General



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March 26, 2014

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March 26, 2014