

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0423-01  
Bill No.: HB 68  
Subject: Pharmacy; Drugs and Controlled Substances; Health Care Professionals; Health and Senior Services Department  
Type: Original  
Date: February 6, 2017

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Bill Summary: This proposal establishes the Narcotics Control Act.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue	(Could exceed \$995,716)	(Could exceed \$4,997,030)	(Could exceed \$4,707,757)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Could exceed \$995,716)</b>	<b>(Could exceed \$4,997,030)</b>	<b>(Could exceed \$4,707,757)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 14 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue	7	11	11
<b>Total Estimated Net Effect on FTE</b>	<b>7</b>	<b>11</b>	<b>11</b>

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### §§195.450 - 195.468 - Narcotics Control Act (NCA)

Officials from the **Department of Health and Senior Services (DHSS)** provide the following assumptions regarding this proposal:

#### Section 195.450 - Funding for Narcotics Control System

DHSS assumes the costs associated with a narcotics control system will be funded with General Revenue. Also, since DHSS is not assured of any potential grant funding opportunities at this time, none of the costs are assumed to be funded by grants. DHSS further assumes costs related to a prescription monitoring program would commence in FY2018.

#### Sections 195.453 - 195.468 - NCA

#### **Division of Regulation and Licensure (DRL):**

It is assumed that DHSS, Division of Regulation and Licensure's (DRL) Section for Health Standards and Licensure's (HSL), Bureau of Narcotics and Dangerous Drugs (BNDD) will assume the duties set forth in the proposed sections. BNDD will require additional staff to implement the legislation.

The following positions will be hired as of September 1, 2017:

One Investigative Manager (Band 1, \$45,600 annually) will be needed to perform the following duties:

- Assist Bureau Chief in drafting a request for proposal to solicit bids for the required database;
- Develop rules, policies, and procedures for reporting by dispensers and access to data by authorized parties;
- Provide technical assistance to program participants on matters relating to the program;
- Supervise subordinate staff involved in program implementation;
- Design and prepare reports of program data and review data collected to determine trends;
- Review database information; and
- Assign and supervise investigations.

### ASSUMPTION (continued)

One Administrative Office Support Assistant (AOSA, \$28,668 annually) will:

- Provide support to the program;
- Respond to inquiries and requests for database reports received;
- Coordinate communication with other agencies and the public, and maintain a memoranda of understanding for data sharing;
- Assist practitioners in obtaining access to the reporting subsystem of the program;
- Generate and e-mail or generate, print, and fax reports as requested by authorized individuals and agencies that cannot access this information via the internet; and
- Respond to telephone inquiries regarding the program

The following positions will be hired as of January 1, 2018:

Four (4) Investigator II positions (\$38,304 annually, each) will be needed to respond to complaints and conduct investigations. These positions are assumed to be telecommuters. These positions are expected to travel extensively; it is assumed that the travel cost will be \$10,000 annually for all investigative staff.

This fiscal note assumes minimal staffing and the review and referral of only the most serious issues identified in the dispensation information. Additional staff would be required to increase the level of review and investigation.

### Section 195.453.5 - Dispenser reimbursement

Section 195.453.5 of the proposed legislation requires DHSS to reimburse dispensers for fees and other direct costs of transmitting the required information. Currently none of the 51 operational PDMPs (49 states, District of Columbia, and Guam) reimburse pharmacies for transmitting data and no data exists to estimate the cost. In order to determine a cost, DHSS, based on recent discussions with the industries affected, assumes each transmission will cost \$0.25. Dispensers who will qualify for reimbursement will fall into three categories – pharmacies, ambulatory surgical centers and individual practitioners. The number of transmissions is expected to grow three percent annually and is reflected below.

Each dispenser is expected to invoice quarterly for a total of 30,300 [(1,370 pharmacies + 117 ASCs + 6,088 practitioners = 7,575 dispensers) X 4] invoices in FY19 and FY20. DHSS would be required to hire staff in the DRL to process the additional invoices received from the dispensers. DHSS estimates that one Accounting Clerk can process 12,000 payment documents per year. (30,300 invoices annually /12,000 per Account clerk = 2.5 Account Clerks needed.) An Accounting Generalist I/II will be needed for every five Accounting Clerks. An Office Support Assistant will be needed for every ten Accounting Clerks. DRL will require staff to process the invoices received from dispensers.

ASSUMPTION (continued)

Category	Number Statewide	FY 2020		FY 2021	
		Annual Transmissions	Reimbursement	Annual Transmissions	Reimbursement
Pharmacies	1,370	12,501,250	\$3,125,313	12,876,288	\$3,219,072
Ambulatory Surgical Centers	117	287,820	\$71,955	296,455	\$74,114
Individual Practitioners	6,088	1,497,648	\$374,412	1,542,577	\$385,644
	7,575	14,286,718	\$3,571,680	14,715,320	\$3,678,830

The following positions will be hired as of July 1, 2018 (FY19):

DRL will require the following FTE to process the 30,300 invoices and the different job categories will work together as follows to pay an invoice.

Accounting Clerk position (\$26,340 annually) duties will include:

- Determine and assign the account coding and forward to the Accounting Generalist II.

Accounting Generalist I/II position (\$36,924 annually) duties will include:

- Supervises, reviews, and approves the work of the Accounting Clerks who are processing payments.
- Review and approve invoices and forward them to The Division of Administration.

Office Support Assistant (\$23,628 annually) duties will include:

- Open the invoice, log it into the tracking system and forward it to Account Clerk.

Based on the above assumptions, the **DRL** requests the following:

• Accounting Clerk	2.50 FTE	\$65,850
• Accounting Generalist I/II	0.50 FTE	\$18,462
• Office Support Assistant	<u>0.25 FTE</u>	<u>\$ 5,907</u>
• Total	3.25 FTE	\$90,219

DHSS, Division of Administration (DA):

In addition to the staff need by the DRL, DHSS would be required to hire staff in the DA to process the additional invoices received from the dispensers. As provided in the DRL's assumptions, each dispenser is expected to invoice quarterly for a total of 30,300 invoices per

ASSUMPTION (continued)

year in both FY19 and FY20. DHSS estimates that one Accounting Clerk can process 12,000 payment documents per year. An Accounting Generalist I/II will be needed for every five Accounting Clerks. An Office Support Assistant will be needed for every ten Accounting Clerks.

The following positions will be hired July 1, 2018 (FY19).

Accounting Clerk position (\$26,340 annually) duties will include:

- Reviews, audits, and enters the payment documents into the financial system.
- Verifies payment occurred.

Accounting Generalist I/II position (\$36,924 annually) duties will include:

- Supervises, reviews, and approves the work of the Accounting Clerks who are processing payments.

Office Support Assistant (\$23,628 annually) duties will include:

- Opens, sorts, and distributes mail.
- Enters payment received dates.
- Files payment documents.

Based on the above assumptions, the **DA** requests the following:

Accounting Clerk	2.50 FTE	\$65,850
Accounting Generalist I/II	0.50 FTE	\$18,462
Office Support Assistant	<u>0.25 FTE</u>	<u>\$ 5,907</u>
Total	3.25 FTE	\$90,219

DHSS, Office of General Counsel:

One full-time attorney (Legal Counsel, \$50,000 annually) would be needed to assist in drafting emergency and proposed regulations and forms; perform legal research and provide day-to-day legal counsel to the program; and represent the department in legal actions; hired September 1, 2017 (FY18).

DHSS provided the response from the **Office of Administration (OA), Information Technology Services Division/DHSS**. OA, ITSD will assist DHSS in establishing and maintaining an application in support of the Narcotics Control Act to monitor the prescribing and dispensing of all Schedule II, III and IV controlled substances by all professionals licensed to prescribe or dispense such substances in this state. Each prescriber will submit to DHSS in electronic format the required information in accordance with transmission standards established by the American Society for Automation in Pharmacy, or any successor organization, and shall report data within twenty-four hours of dispensation. A paper form alternative must be available

ASSUMPTION (continued)

for those provided a waiver for electronic submission by DHSS. Dispensation information submitted to DHSS shall be retained by the department for no longer than five years from the date of submission.

Infrastructure costs were calculated using the FY2017 State Data Center (SDC) Cost Allocation Plan (CAP) document, assuming use of an application built for State of MO and hosted in the SDC. Three servers to include development, test and production with 100 GB of disk storage for each are needed. Funding has been identified as "General Revenue" based on language in the bill that directs the department to establish and maintain this program "subject to appropriations".

ITSD assumes that every new IT project/system will be bid out because all ITSD resources are at full capacity. FY18 costs are estimated to be **\$609,129** (8,067.6 contract hours X \$75/hour = \$605,070 plus expense and equipment (E&E) costs of \$4,059); FY19 costs are estimated to be **\$579,073** (6,192.72 contract hours X \$75 = \$337,608 + \$4,993 E&E + \$109,626 on-going support); and FY20 on-going costs are estimated to be **\$224,370** annually.

**§195.456 - Information submission, violations and penalty provisions**

Officials from the **DHSS** state 195.456.8 could create an unknown but potentially large fiscal impact due to litigation. DHSS is unable to estimate the amount, therefore the fiscal impact is unknown.

**§195.465 - Information submission, violations and penalty provisions**

Officials from the **Department of Corrections (DOC)** provide the following assumptions related to this proposal:

This house bill establishes a Narcotics Control Act by amending Chapter 195 of the RSMo by the addition of eight new sections: 195.450, 195.453, 195.456, 195.459, 195.462, 195.465, 195.468, and 195.471. This bill establishes the authority of the Department of Health and Human Services (DHSS) to create and maintain a database for monitoring the prescribing and dispensing of all schedule II, III and IV controlled substances in Missouri. The burden of responsibility falls upon the pharmacist/pharmacy to electronically report the required information within 24-hours of dispensing of the controlled medications. The bill stipulates who will have access to information in the database.

This new legislation (HB 68) includes a new class E felony for individuals, authorized or unauthorized, who unlawfully access prescribing or dispensing information or discloses said information. Therefore, analysis of the impact to DOC reflects current data for the standard impact for new, nonviolent offenses of a class D felony. In FY16, class D nonviolent sentences

ASSUMPTION (continued)

averaged 3.6 years. Incarcerated offenders serve 2.3 years in prison and 1.3 years on parole. Average time for probation is 3.0 years. An estimated one offender is sentenced to a prison term and two offenders given probation each year. The cumulative impact on DOC, with the passage of the Narcotic Control Act, could result in an additional 2.3 offenders incarcerated and 7.3 persons on probation by FY21.

If this impact statement has changed from statements submitted in previous years, it is because the department's Budget and Research Section reviewed the way responses had been submitted and has developed a more precise way to calculate the impact. In previous years' responses, the full impact of recidivism for parole releases was not adequately calculated. Now we have been able to quantify the fact that some parolees are returned to prison after release and that has been added into the calculation of the impact. The total number of offenders has not changed but there is an assumption that they will spend more time back in prison rather than being on community supervision, which will increase the amount of the impacts.

The FY16 average cost of supervision is \$6.12 per offender per day or an annual cost of \$2,234 per offender. The DOC cost of incarceration is \$16.67 per day or an annual cost of \$6,085 per offender. DOC assumes a 2% annual inflation in costs.

The DOC would assume this legislation will result in the following long term costs to the General Revenue Fund:

FY18 (Year 1, 10 months)	\$8,794
FY19 (Year 2)	\$21,528
FY20 (Year 3)	\$30,133
FY21 (Year 4)	\$32,159
FY22 (Year 5)	\$32,802
FY23 (Year 6)	\$33,458
FY24 (Year 7)	\$34,127
FY25 (Year 8)	\$34,809
FY26 (Year 9)	\$35,506
FY27 (Year 10)	\$36,216

**Oversight** assumes the DOC would be able to absorb FY18 costs.

Officials from the **OA, Division of Budget & Planning (B&P)** state section 195.465.1 contains an administrative penalty of \$1,000 per violation for dispensers that knowingly fail to submit or submit incorrect information. Section 195.465.2 states that any person who unlawfully and knowingly accesses or discloses, or a person authorized to have prescription and dispensation information who knowingly discloses such information, shall be guilty of a Class E felony. Any fines or penalties collected must be directed to the benefit of public schools and may increase total state revenue (TSR), but not 18(e). This would increase TSR by an unknown amount.



ASSUMPTION (continued)

**Oversight** assumes the number of administrative penalties that may be imposed to be unknown. Oversight assumes the amounts collected will not be significant and, therefore, will not present unknown administrative penalties for fiscal note purposes.

Officials from the **OA, General Services Division (GS)** assume that neither the Department of Health and Senior Services nor any state employee would violate the proposal. Therefore, it is assumed that no successful claims will be made against the Legal Expense Fund and the proposal would have no fiscal impact upon the OA, GS. However, should that assumption prove incorrect, significant costs could be incurred by the Legal Expense Fund.

**§195.468 - Education courses**

Officials from the **DHSS** state the DHSS is required to create and implement three PDMP-related education courses. DHSS is currently required to provide educational courses and information by Section 195.198, RSMo, and assumes the new requirements will be met with existing resources.

In summary, DHSS estimates that 13.5 employees will be needed to implement the prescription drug monitoring program. It is assumed staff will be located within the central office. Rental space will be  $\$21.00 \times 230 \text{ sq. ft.} \times 13 \text{ FTE} = \$62,790$ . It is also assumed that 4 staff will be commuters. Including ITSD costs, DHSS estimates FY18 costs to the General Revenue Fund of Unknown greater than \$1,152,507; FY19 costs of Unknown greater than \$5,227,975; and FY20 costs of Unknown greater than \$4,862,672.

**Oversight** will adjust DHSS rental expenses to correspond to the estimated rate per square foot used by the Office of Administration, Division of Facilities Management, Design and Construction. In addition, Oversight assumes DHSS will not hire part-time staff (2 quarter-time (0.25 employees) and 4 half-time (0.5 employees)) and will have those duties absorbed by existing staff.

In response to similar proposals from the current session, officials from the **Office of Administration (OA), Division of Facilities Management, Design and Construction (FMDC)** state additional space in leased facilities for new staff for agencies in the Cole County area is estimated at 230 sq. ft. per FTE times \$17.50 per sq. ft., or \$4,025 annually per FTE. This cost includes building lease costs, fuel and utilities, and janitorial services. If a larger space were needed, the space was needed in other regions of the state, or newly constructed space if required, the estimated costs would be higher cost per sq. ft. (estimated at \$24.50 per sq. ft.).

ASSUMPTION (continued)

**Bill as a whole**

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** cannot assume that existing staff will provide competent, effective representation for any new cases where indigent persons are charged with any of the proposed new crimes relating to dispensation of pharmaceuticals monitoring.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases.

**Oversight** assumes the SPD can absorb the additional caseload that may result from this proposal.

Officials from the **Office of Attorney General (AGO)** assume any potential costs arising from this proposal can be absorbed with existing resources. However, the AGO may seek additional appropriations if the proposal results in a significant increase in cases.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS. The creation of a new crime creates additional responsibilities for county prosecutors which may, in turn, result in additional costs, which are difficult to determine.

Officials from the **OA, Administrative Hearing Commission** anticipate this legislation will not significantly alter its caseload. However, if similar bills pass resulting in more cases, there could be a fiscal impact.

Officials from the **Joint Committee on Administrative Rules (JCAR)** state the legislation is not anticipated to cause a fiscal impact to JCAR beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** state 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 \$2,500. 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

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office can sustain with the 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 the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration, the Department of Public Safety, Missouri State Highway Patrol, the Department of Social Services, MO HealthNet Division and Division of Legal Services, the Office of State Courts Administrator, the Boone County Sheriff's Department, the Cole County Sheriff's Department, the Springfield Police Department and the St. Louis County Police Department** each assume the proposal would not fiscally impact their respective agencies.

Officials from the following **law enforcement agencies**: the Ashland Police Chief, Buchanan County Sheriff's Department, Cass County Sheriff's Office, Clark County Sheriff's Department, Columbia Police Department, Eureka, Independence Police Department, Jackson County Sheriff's Department, Jefferson City Police Department, Jefferson County 911 Dispatch, Platte County Sheriff's Department, St. Charles Police Department, St. Joseph Police Department and the St. Louis Metropolitan Police Department did not respond to **Oversight's** request for a statement of fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
<b>GENERAL REVENUE</b>			
<u>Costs - DHSS (§§195.453 - 195.468)</u>			
Personal service	(\$180,165)	(\$386,672)	(\$390,539)
Fringe benefits	(\$113,783)	(\$228,539)	(\$229,691)
Equipment and expense	(Could exceed \$92,639)	(Could exceed \$209,538)	(Could exceed \$154,194)
ITSD contract costs and ongoing expense (p.7)	(\$609,129)	(\$579,073)	(\$224,370)
Transmittal fee expense (p.5)	\$0	(\$3,571,680)	(\$3,678,830)
Total <u>Costs - DHSS</u>	<u>(Could exceed \$995,716)</u>	<u>(Could exceed \$4,975,502)</u>	<u>(Could exceed \$4,677,624)</u>
FTE Change - DHSS	7 FTE	11 FTE	11 FTE
<u>Costs - DOC (§195.465)</u>			
Increase in incarceration expenses	\$0	(\$21,528)	(\$30,133)
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(Could exceed \$995,716)</u></b>	<b><u>(Could exceed \$4,997,030)</u></b>	<b><u>(Could exceed \$4,707,757)</u></b>
Estimate Net FTE Change on the General Revenue Fund	7 FTE	11 FTE	11 FTE
 <u>FISCAL IMPACT - Local Government</u>	 FY 2018 (10 Mo.)	 FY 2019	 FY 2020
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

§§195.453-195.460 - This proposal will have an unknown direct fiscal impact on small business licensed pharmacies and dispensing practitioners as they will be required to obtain the computer hardware and software to run the program. In addition, administrative costs will be incurred to enter dispensing and transmitting data to the collection location and maintaining dispensing log information.

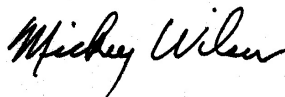
### FISCAL DESCRIPTION

This bill establishes the Narcotics Control Act. In its main provisions, the bill: (1) Requires the Department of Health and Senior Services to establish and maintain a program to monitor the prescribing and dispensing of all Schedule II through Schedule IV controlled substances; (2) Requires each dispenser to electronically submit specified information to the department within twenty-four hours of dispensation; (3) Allows the department to issue a waiver to a dispenser who is unable to submit the required information electronically and allows a dispenser to submit the required information by paper form or other means; (4) Requires the department to reimburse each dispenser for the fees and other direct costs of transmitting the required information; (5) Requires all submitted prescription information to be confidential and not subject to public disclosure, with specified exceptions; (6) Requires the department to notify appropriate law enforcement or agencies if it has reasonable cause to believe may have violated the law or been in breach of professional standards; (7) Prohibits dispensation information submitted to the department from being used to prevent an individual from owning or obtaining a firearm. (8) Allows any person harmed or damaged by a violation of this section to bring a civil action for damages, and sovereign immunity shall not be available as a defense for the Department of Health and Senior Services in such an action; (9) Allows the department to release non-personal, general information for statistical, educational, or research purposes; (10) Authorizes the department to contract with any other agency of this state or any other state with a private vendor or any state government that currently runs a narcotics control program; (11) Specifies that a dispenser who knowingly fails to submit required dispensation information to the department or knowingly submits incorrect dispensation information will be subject to an administrative penalty in the amount of \$1,000 for each violation; (12) Specifies that any person who unlawfully and knowingly accesses or discloses, or a person authorized to have prescription or dispensation information under these provisions or knowingly uses the information in a manner and for a purpose in violation of these provisions is guilty of a class E felony; and (13) Requires the department to create and implement specified educational courses regarding the provisions of the bill and, when appropriate, to work with associations for impaired professionals to ensure intervention, treatment, and ongoing monitoring and follow up and encourage individual patients who are identified and who have become addicted to substances monitored by the program to receive addiction treatment.

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

SOURCES OF INFORMATION

Office of Attorney General  
Department of Health and Senior Services  
Department of Insurance, Financial Institutions and Professional Registration  
Department of Corrections  
Department of Public Safety -  
    Missouri State Highway Patrol  
Department of Social Services -  
    MO HealthNet Division  
    Division of Legal Services  
Joint Committee on Administrative Rules  
Missouri Office of Prosecution Services  
Office of Administration -  
    Administrative Hearing Commission  
    Division of Budget & Planning  
    Facilities Management, Design and Construction  
    General Services Division  
    Information Technology Services Division  
Office of State Courts Administrator  
Office of Secretary of State  
Office of State Public Defender  
Boone County Sheriff's Department  
Cole County Sheriff's Department  
Springfield Police Department  
St. Louis County Police Department



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