

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3366-02
Bill No.: HB 2141
Subject: Professional Registration and Licensing
Type: Original
Date: February 14, 2020

Bill Summary: This proposal establishes the Fresh Start Act of 2020.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Various DCI Funds	(Could be greater than \$396,699)	(Could be greater than \$427,962)	(Could be greater than \$432,253)
Total Estimated Net Effect on Other State Funds	(Could be greater than \$396,699)	(Could be greater than \$427,962)	(Could be greater than \$432,253)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Various DCI Funds	4 FTE	4 FTE	4 FTE
Total Estimated Net Effect on FTE	4 FTE	4 FTE	4 FTE

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

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Section 324.012 - Fresh Start Act of 2020

Officials from the **Department of Commerce and Insurance (DCI)** state this proposal requires that each state licensing authority list the categories or specific criminal convictions that could disqualify an applicant from receiving a license. Further, licensing authorities shall only list criminal convictions that are specific and directly related to the duties and responsibilities for the licensed occupation. Currently no such list exists. As a result, the department would need ongoing attorney services to develop the list and determine which convictions are "specific and directly related" to the type of license being applied for. The department estimates at least \$285,437 in additional FTE and/or legal contract costs (estimating three (3) FTE attorneys at \$70,359 annually or work in various division / boards in the department) to various department funds annually for this work. The exact costs could be greater. The department would need to request additional FTE and/or expense appropriation through the budget process to handle this additional workload.

This bill also authorizes that an individual with a criminal record may petition a licensing authority at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license.

The licensing authority shall inform the individual of their standing within 30 days after the licensing authority has met, but in no event more than four months after receiving the petition from the applicant. Each written determination that an applicant's criminal conviction is a specifically listed disqualifying conviction "shall be documented with written findings for each of the grounds or reasons...by clear and convincing evidence sufficient for a reviewing court".

The licensing authority may charge a fee not to exceed \$25.00 for each petition. The fiscal impact the department for petition process is unknown depending up on the number of petitions received and the extent of the work required. The department would request additional FTE and appropriation, as necessary, through the budget process.

DCI also state that it will take additional review and time to determine if something is "directly related" to the occupation compared to "reasonably related." The person determining that will have to know the essence of a profession and what it requires to be able to determine if the criminal conviction is directly related and whether that crime needs to go on the specific list of crimes as the statute requires. The department is estimating needing one (1) FTE attorney for this work.

ASSUMPTION (continued)

In summary, DCI assumes a cost of (4 FTE at \$70,359 annually and an additional unknown cost of \$100,000 for either or both contracting and additional legal staff) of Unknown but greater than \$396,699 in FY 2021, \$427,962 in FY 2022 and \$432,253 in FY 2023 to Various Department Funds to provide for the implementation of all of the changes in this proposal.

Oversight will reflect DCI's estimated need of at least 4 attorneys for this section and that DCI may or may not incur additional unknown cost of \$100,000 for either or both contracting and additional legal staff as a result of this proposal. Oversight will reflect the estimated DCI cost as (Could be greater than \$396,699) in FY 2021, (Could be greater than \$427,962) in FY 2022 and (Could be greater than \$432,253) in FY 2023.

Oversight will also reflect a revenue of \$117,000 per year to Various DCI Funds as a result of the \$25 petition fee.

Officials from the **Department of Health and Senior Services (DHSS) - Office of General Counsel** state the proposed legislation allows an individual with a criminal record to petition a licensing authority at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include details on the individual's criminal record, and the licensing authority shall inform the individual of his or her standing within thirty days of receiving the petition from the applicant.

The Department of Health and Senior Services will be required to:

- Review requests for records (sunshine and/or subpoenas)
- Coordinate and advise with program staff to determine whether the Department has records responsive to requests
- Review of individual records
- Determine appropriate response
- Respond to requestor
- Draft/file motions to quash subpoenas when necessary
- Possible referrals to the Attorney General's Office
- Assist in the preparation of the documentation regarding each petition that must be done within thirty days of receiving the petition.

The department anticipates being able to absorb these costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

Oversight notes that the above mentioned agency has stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note.

ASSUMPTION (continued)

Officials from the **Department of Health and Senior Services (DHSS) - Division of Regulation and Licensure (DRL)** state the proposed legislation requires state licensing authorities to list the specific criminal convictions that could disqualify an applicant from receiving a license. This requirement falls within the normal ebb and flow for DRL.

The proposed legislation allows a licensing authority to charge a fee to recoup costs when an individual with a criminal record petitions the licensing authority for a determination of whether their criminal record will disqualify them from obtaining a license. DRL assumes fees will not be charged for this service.

The proposed legislation also removes the Board of Nursing Home Administrators' (BNHA) ability to deny licenses based on moral turpitude. This will require BNHA to promulgate new rules for the program. It is assumed it will take the BNHA's Principal Assistant Board/Commission (salary \$53,208) approximately 16 hours to make the required changes to state rules. Based on 2,080 working hours per year, this would require 0.01 FTE to assume these duties ($16 \text{ hours} \div 2,080 \text{ hours per year} = 0.01$) for a total personal service cost of \$532 ($\$53,208 \times 0.01$).

The department anticipates being able to absorb these costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

Oversight notes that the above mentioned agency has stated their organization anticipates being able to absorb the cost related to this proposal. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note.

Officials from the **Office of the Secretary of State (SOS)** assume 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 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.

ASSUMPTION (continued)

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 require additional resources.

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

Oversight assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

Bill as a whole:

Officials from the **Office of Administration - Administrative Hearing Commission**, the **Department of Revenue**, the **Department of Health and Senior Services**, the **Department of Natural Resources**, the **Department of Agriculture**, the **Department of Transportation**, the **Department of Public Safety - Missouri Highway Patrol** and the **Department of Higher Education & Workforce Development** each assume the proposal will have no fiscal impact on their respective organizations.

Oversight notes that the above mentioned agencies have stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

FISCAL IMPACT - State Government	FY 2021 (10 Mo.)	FY 2022	FY 2023
VARIOUS DCI FUNDS			
Revenue - DCI p. 4 \$25 petition fee (§ 324.012)	\$117,000	\$117,000	\$117,000
Cost - DCI (§§ 214.276 -346.105 & § 324.012) p. 4			
Salaries	(\$234,531)	(\$284,252)	(\$287,094)
Fringe Benefits	(\$116,288)	(\$140,480)	(\$141,424)
Equipment and Expense	(\$62,880)	(\$20,230)	(\$20,735)
Other Fund Cost (Additional FTE or Legal Contract Cost for listing criminal convictions	\$0 or (Unknown greater than \$100,000)	\$0 or (Unknown greater than \$100,000)	\$0 or (Unknown greater than \$100,000)
Total Cost - DCI (§§ 214.276 -346.105 & § 324.012) p. 4	(Could be greater than \$513,699)	(Could be greater than \$544,962)	(Could be greater than \$549,253)
FTE Change - DCI (§§ 214.276 - 346.105 & § 324.012)	4 FTE	4 FTE	4 FTE
ESTIMATED NET EFFECT TO VARIOUS DCI FUNDS	(Could be greater than \$396,699)	(Could be greater than \$427,962)	(Could be greater than \$432,253)
Estimated Net FTE Change to the General Revenue Fund	4 FTE	4 FTE	4 FTE
 FISCAL IMPACT - Local Government	 FY 2021 (10 Mo.)	 FY 2022	 FY 2023
	\$0	\$0	\$0

FISCAL IMPACT - Small Business

Small businesses that require professional licenses could be impacted by this proposal.

FISCAL DESCRIPTION

This bill establishes the "Fresh Start Act of 2020". Beginning January 1, 2021, a person cannot be disqualified from licensure for any occupation solely or in part because of a prior conviction of a crime, unless the criminal conviction directly relates to the duties and responsibilities for the licensed occupation.

Each state licensing authority must revise its existing licensing requirements to explicitly list which categories or specific criminal convictions could disqualify an applicant. The licensing authority cannot consider an arrest without a conviction. A disqualifying conviction must be specific and directly related to the duties and responsibilities of the occupation.

In determining whether an applicant with a conviction will be denied a license, the licensing authority must use a clear and convincing standard of proof and determine the nature and seriousness of the crime, the passage of time since the commission of the crime, the relationship of the crime to the fitness required to perform the duties of the occupation, and any evidence of rehabilitation.

An individual with a conviction cannot be disqualified from an occupation for more than five years, unless the crime is violent or sexual in nature or if the individual was convicted of another crime during that five-year period.

An individual with a conviction can petition the licensing authority for a determination of whether or not the individual's criminal record will disqualify him or her from licensure. The licensing authority must respond within 30 days after the licensing authority has met, but in no event more than four months after receiving the petition from the applicant.

If an individual is denied a license based on a previous criminal conviction, the licensing authority must notify the individual of the grounds for denial. Evidence for the grounds for denial must have clear and convincing evidence sufficient for a reviewing court. The applicant has the right to a hearing to challenge the licensing authority's decision. The licensing authority has the burden of proof on whether the conviction directly relates to the occupation.

The provisions of the act also apply to any occupational license created after the effective date of the bill.

These provisions do not apply to peace officers or law enforcement personnel.

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

Department of Commerce and Insurance
Office of Administration
 Administrative Hearing Commission
Department of Revenue
Department of Health and Senior Services
Department of Natural Resources
Department of Agriculture
Department of Transportation
Department of Public Safety
 Missouri Highway Patrol
Department of Higher Education & Workforce Development
Office of the Secretary of State
Joint Committee on Administrative Rules



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