

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3982-02
Bill No.: HCS for HB 1702
Subject: Securities; Courts; Business and Commerce; Estates, Wills and Trusts
Type: Original
Date: February 12, 2020

Bill Summary: This proposal changes the law regarding financial instruments.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	\$0	Up to (\$344,292)	Up to (\$688,584)
Total Estimated Net Effect on General Revenue	\$0	Up to (\$344,292)	Up to (\$688,584)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Residential Mortgage Licensing Fund	Up to \$6,000	Up to \$6,000	Up to \$6,000
Other State Funds	\$0	Up to (\$538,508)	Up to (\$1,077,016)
Total Estimated Net Effect on Other State Funds	Up to \$6,000	Up to (\$532,508)	Up to (\$1,071,016)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 11 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
Total Estimated Net Effect on FTE	0	0	0

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 to Unknown	\$0 to Unknown	\$0 to Unknown

FISCAL ANALYSIS

ASSUMPTION

§§30.260 & 30.753

Officials from the **Office of the State Treasurer (STO)** state that total state revenue will decrease because linked deposit loans earn less in interest than other options that the State Treasurer has to invest in as a result of this proposal.

The current activity for the Linked Deposit Program is as follows:

Small Business Program	\$256,644,377
Job Enhancement Program	\$ 700,000
Alternative Energy Program	\$ 0
Agriculture Program	\$190,655,584
Local Government Program	\$ 14,960,735
Multi-Family Housing Program	<u>\$ 43,625,460</u>
Total Active Deposits	\$506,596,156
Approved and Waiting Placement	\$ 5,285,387
Awaiting Approval	\$ 425,636
In Progress	<u>\$ 9,935,287</u>
Total	\$522,242,466

Fiscal Impact

39% to GR - \$688,584

61% to all other interest earning funds - \$1,077,016

Formula

Average 5 year agency bond: 3.00 callable or 2.75 bullet = Average of 2.875% the state earns

Average yield on linked deposit is .668%

Opportunity cost is 2.207% (2.875% - 0.668%)

$\$80,000,000 (\$800,000,000 - \$720,000,000) * 2.207\% = \$1,765,600$

GR	39% x \$1,765,600 =	\$688,584;
Other	61% x \$1,765,600 =	<u>\$1,077,016</u>
Total		\$1,765,600

ASSUMPTION (continued)

The STO states the fiscal impact is staggered; no impact in FY 2021, half of \$1,765,600 in FY 2022, and a full impact in FY 2023.

Oversight notes the proposal increases the aggregate cap from \$720 million to \$800 million. Current law states that no more than \$110 million shall be used for linked deposits to eligible small businesses. This proposal will increase the \$110 million to \$190 million.

Oversight notes that increasing the allocation for Linked Deposits will result in a decrease to state revenue given that there are investments with higher interest rates of return that the STO could take advantage of. The interest rate environment with lending institutions will not be constant and Oversight is unable to determine the amount of businesses that would utilize the Linked Deposit program in the future. Therefore, Oversight will reflect a loss to general revenue of up to \$688,584 and a loss to other state funds of up to \$1,077,016 (STO estimate of interest lost with program being fully utilized with the additional \$80,000,000).

Oversight also notes there is potential savings to local political subdivisions if they choose to utilize the Linked Deposit Program. Therefore, Oversight will reflect an unknown positive fiscal impact to political subdivisions to the extent they avail themselves of up to \$80 million in increased linked deposit authority.

Oversight notes this increase in the Linked Deposit program may have positive benefits to the various Missouri businesses and entities that utilize the program. Oversight considers these benefits to be indirect impacts and have not reflected them in the fiscal note.

§§409.605, 409.610, 409.615, 409.620, 409.625, 409.630, 409-3.302, 409-4.412, 409-6.604

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

In response to similar legislation (HCS for HB 354) from 2019, officials from the **SOS** stated in calendar years 2017 and 2018, approximately 3 Respondents were penalized under Section 409.4-412 for a total amount of approximately \$400,000 and approximately 51 Respondents were penalized under Section 409.6-604 for a total amount of approximately \$1,672,000. The money collected is forwarded to the state treasury for the benefit of the county and township school funds in accordance with Article IX, Section 7 of the Missouri Constitution.

The Securities Division does not estimate an increase in the number of penalties imposed, but the penalties themselves would increase, so the gross amount would be higher.

Oversight notes the bill changes the maximum amount of civil penalties that may be assessed and that there may be an increase in the gross amount collected pursuant to Section 409.4-412 and 409.6-604. Without additional information, and since this is a maximum amount possible, Oversight will reflect a zero to unknown amount of additional penalty revenue to school districts.

Officials from the **Department of Health and Senior Services (DHSS)** assume Section 409.610 requires the DHSS to provide information regarding a qualified adult to the reporting qualified individual or investment advisor representative upon request, subsequent to notifying the department of potential financial exploitation of the qualified adult. DHSS, Division of Senior and Disability Services, Section of Adult Protective Services investigators are responsible for investigating reports of financial exploitation.

An Adult Protective Community Worker II (average salary \$36,170) would be responsible to provide the information requested to the qualified individual. The Special Investigations Unit investigates on average 100 reports of financial exploitation of this nature and anticipates a 20% increase in these types of reports. Providing requested information to the qualified individual is estimated to take 30 minutes per report. Assuming 120 reports ($100 \times 0.20 = 20$; $100 + 20 = 120$), it is estimated providing this information to qualified individuals will take an additional 60 hours, or 0.03 FTE ($60 \text{ hours} \div 2,080 \text{ hours per year} = 0.03$) for total personal service cost of \$904.25 ($\$36,170 \times 0.03 \times 10/12$) for FY21 and \$1,085.10 ($\$36,170 \times 0.03$) in subsequent years.

The department anticipates being able to absorb the costs of the Adult Protective Community Worker. However, until the FY21 budget is final, the department cannot identify specific funding sources.

ASSUMPTION (continued)

Section 409.615.3(3) permits the holding of disbursement or transaction for the account of a qualified adult to be extended by the Director of DHSS, after notifying the commissioner of securities. With this proposed legislative change, the DHSS would continue to work closely with Secretary of State, Securities Commissioner. If, during our investigation it is determined an extension is needed due to additional time is required for investigation and/or additional time is required for medical assessment and court proceedings when the qualified adult's capacity is in question, then DHSS would either continue with investigation and/or the Office of General Counsel would be responsible for guardianship/conservatorship petition through Probate Court when the department has exhausted alternative arrangements.

The further investigation would be the responsibility of the Adult Protective Community Worker and as described in prior section, the department anticipates being able to absorb the costs. However, the responsibility of Office of General Counsel attorneys to petition and participate in probate court hearings is anticipated to be absorbed by the department.

Also, within this subsection, DHSS would be responsible for conducting reviews of circumstances every thirty days to determine if the order extension should remain in effect. This would be the responsibility of the Adult Protective Community Worker and as described in prior section, the department anticipates being able to absorb the costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

Oversight does not have any information to the contrary. Oversight assumes that DHSS will be able to handle any potential increase of workload with existing staff and resources.

§§443.717, 443.825, 443.855, 443.857 - Mortgage Broker Licensing

Officials from the **Department of Commerce and Insurance (DCI)** estimate 8 to 10 new companies will request licenses along with a \$600 licensing fee. Additional revenues to the Residential Mortgage Fund are estimated to be up to \$6,000 (10 x \$600). The expected slight increase in applications is due to the minor language change in 443.857 related to the in-state office requirement. The proposed language would reduce a current barrier to entry for some companies already providing certain niche mortgage fulfillment services in other states. DCI expects there would be some new applications in the first year.

Additional staff and expenses are not being requested with this single proposal, but if multiple proposals pass during the legislative session which require policy form reviews the department may need to request additional staff to handle increase in workload.

ASSUMPTION (continued)

Oversight notes that the DCI 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 revenue to the Residential Mortgage Fund of up to \$6,000 in FY 2021, FY 2022 and FY 2023 and no additional cost to the DCI on the fiscal note.

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** state that the Missouri Division of Finance has an Originating Agency Identifier (ORI) pursuant to Section 43.543, RSMo, for mortgage licensing, however, the Missouri Division of Finance primarily conducts background checks through an FBI Channeler (FieldPrint), and utilizes the Nationwide Mortgage Licensing System and Registry (NMLSR). As the background checks are being conducted via an FBI Channeler, there is no Patrol impact.

Oversight notes that the MHP 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 for that agency.

\$476,419

Officials at the **Department of Commerce and Insurance** assume no fiscal impact from this proposal.

Bill as a Whole

Officials at the **Office of the State Courts Administrator**, the **Office of the Attorney General**, the **Office of Administration** and the **Department of Social Services** each assume no fiscal impact to their respective agencies from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
GENERAL REVENUE FUND			
<u>Lost opportunity for higher returns - STO</u>			
Decrease in investment returns (§§30.260 & 30.753)	\$0	Up to (\$344,292)	Up to (\$688,584)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>\$0</u>	<u>Up to (\$344,292)</u>	<u>Up to (\$688,584)</u>
 RESIDENTIAL MORTGAGE LICENSING FUND			
<u>Revenue - DCI</u>			
\$600 filing fee (§§443.717, 443.825, 443.855, 443.857)	<u>Up to \$6,000</u>	<u>Up to \$6,000</u>	<u>Up to \$6,000</u>
ESTIMATED NET EFFECT TO THE RESIDENTIAL MORTGAGE LICENSING FUND	<u>Up to \$6,000</u>	<u>Up to \$6,000</u>	<u>Up to \$6,000</u>
 OTHER STATE FUNDS			
<u>Lost opportunity for higher returns - STO</u>			
Decrease in investment returns (§§30.260 & 30.753)	\$0	Up to (\$538,508)	Up to (\$1,077,016)
ESTIMATED NET EFFECT TO OTHER STATE FUNDS	<u>\$0</u>	<u>Up to (\$538,508)</u>	<u>Up to (\$1,077,016)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
LOCAL POLITICAL SUBDIVISIONS			
<u>Savings</u> - Linked Deposit Participation (§§30.260 & 30.753)	\$0	Unknown	Unknown
<u>Income</u> - School Districts - potential increase in penalties (§409.4-412 & §409.6-604)	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>

FISCAL IMPACT - Small Business

§§30.260 & 30.753 - Small businesses could benefit from continued opportunities to participate in the linked deposit program. The addition of \$80 million will allow more small businesses in Missouri to apply for a linked deposit.

FISCAL DESCRIPTION

§§30.260 & 30.753

Currently, the State Treasurer must create an investment policy that includes an asset allocation plan that limits the total amount of state moneys that may be invested in a particular investment. The asset allocation plan must also set diversification limits that include a restriction limiting the total amount of time deposits (not including linked deposits) of state money placed with any one single banking institution to no more than 10% of all time deposits of state money. This bill changes that limit to 20% of all time deposits of state money authorized under the asset allocation plan (Section 30.260, RSMo).

Currently, it is required that market rate is to be determined at least once a month by the State Treasurer using a process that gives consideration of prevailing rates offered for certificate of deposits by well-capitalized Missouri financial institutions and the advance rate established by the Federal Home Loan Bank of Des Moines. This bill requires the treasurer to also give consideration to any other calculation based on current market investment indicators determined by the State Treasurer (Section 30.260).

Currently, the State Treasurer may invest in linked deposits; however the total amount deposited at any one time may not exceed, in the aggregate, \$720 million and no more than \$110 million of the aggregate shall be used for link deposits to small businesses. This bill changes those limits to \$800 million and \$190 million, respectively (Section 30.753).

FISCAL DESCRIPTION (continued)

§§409.605, 409.610, 409.615, 409.620, 409.625, 409.630, 409-3.302, 409-4.412, 409-6.604

This bill adds broker-dealers and investment advisors (or investment advisor representatives) to the individuals covered under the Senior Savings Protection Act. Broker-dealers and investment advisors may notify the Department of Health and Senior Services, the Commissioner of Securities, or an immediate family member of his or her reasonable belief that financial exploitation of an vulnerable person has occurred or is being attempted. The department or Commissioner may provide information on the vulnerable person to the reporting individual upon request.

In the instance of a reasonable belief of financial exploitation, the bill allows a broker-dealer, investment advisor, or associated person to refuse a transaction from the account of the vulnerable person for a maximum of 10 business days. To refuse a transaction or disbursement, the broker-dealer, investment advisor, or associated person must send written notice to the vulnerable person, along with contact information for the Investor Protection Hotline. Following the refusal of a transaction or disbursement, the Commissioner or department may enter an order to extend the refusal for the time necessary to protect the vulnerable person, but the agency issuing the order must review the circumstances every 30 days.

The bill specifies a broker-dealer or investment advisor who complies with the Senior Savings Protection Act will be immune to civil liability.

A broker-dealer or investment advisor must provide access to records relevant to the suspected financial exploitation to the department, the Commissioner, or law enforcement.

The Commissioner must update their training website to include resources to assist broker-dealers and investment advisors in the prevention and detection of financial exploitation.

The bill allows a rule to be adopted to require a notice filing by an issuer to include a:

- (1) Copy of the Form 1-A or other forms required by the Securities and Exchange Commission;
- (2) Consent of service of process and a payment of a fee of \$100; and
- (3) Payment of \$50 fee for any late filing.

This bill raises the maximum civil penalty under the Senior Savings Protection Act from \$5,000 to \$25,000 for each violation. The bill also raises the maximum penalty after a hearing from \$1,000 to \$25,000 for each violation and the penalty for a finding of a violation against an elderly or disabled person from \$5,000 to \$15,000 for each violation.

FISCAL DESCRIPTION (continued)

§§443.717, 443.825, 443.855, 443.857 - Mortgage Broker Licensing

Currently, mortgage loan originators have prelicensing education requirements of at least 20 hours. This bill states that a prelicensing education course completed by an applicant will not satisfy the education requirement if the course precedes an application by a certain time period, as determined by the Nationwide Mortgage Licensing System and Registry (NMLSR).

The bill requires certain persons, as outlined in the bill, related to a mortgage loan originator to furnish their fingerprints to the NMLSR for submission to the Federal Bureau of Investigation and any governmental agency for a state, national, and international criminal history background check. The bill allows the Director of the Division of Finance to use the NMLSR as an agent for transmitting information to and from the Federal Department of Justice or any other governmental agency.

Currently, the law requires that each residential mortgage loan broker maintain at least one full-service office in Missouri. The bill allows this requirement to be waived for persons exclusively engaged in the business of loan processing or underwriting.

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 State Treasurer
Department of Commerce and Insurance
Department of Social Services
Office of the Secretary of State
Department of Health and Senior Services
Missouri Highway Patrol
Office of the State Courts Administrator
Office of the Attorney General
Office of Administration



Julie Morff
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