

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0089-07
Bill No.: Truly Agreed To and Finally Passed CCS for SS for SCS for SB 70
Subject: Estates, Wills and Trusts; Disabilities; Public Assistance;
Type: Original
Date: June 6, 2011

Bill Summary: This legislation modifies provisions relating to the Missouri Family Trust.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

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 402.199 - 402.208, 473.657 & 475.093:

Officials from the **Missouri State Treasurer, Missouri House of Representatives, Department of Revenue, Missouri Senate, Missouri Governor,** and the **Department of Insurance, Financial Institutions and Professional Registration** each assume the proposal would have no fiscal impact on their respective agencies.

In response to a previous version of this proposal, officials from the **Office of the State Courts Administrator, Department of Elementary and Secondary Education, Department of Labor and Industrial Relations, Department of Mental Health, Department of Health and Senior Services,** and the **Office of Administration-Administrative Hearing Commission** each assume the proposal would have no fiscal impact on their respective agencies.

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 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. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

In response to a previous version of this proposal, officials from the **Office of the Attorney General (AGO)** state the passage of this proposal may increase the number of cases referred to AGO due to the provision changing the order of payments received after the death of a beneficiary. AGO assumes that any potential costs arising from this proposal can be absorbed with existing resources. Additional staff and expenses are not being requested at this time, if

ASSUMPTION (continued)

there is a significant increase in the number of cases referred to AGO, the AGO may need to request additional staff to handle the increase in workload.

Officials from the **Department of Social Services (DSS)-Family Support Division (FSD)** assume there is no fiscal impact to the FSD.

The FSD currently disregards pooled special needs trust resources when determining the eligibility of an individual for assistance as long as the trust meets the following conditions as described by 42 U.S.C. Section 1396p(d)(4)(C):

- 1) The trust is established and maintained by a non-profit association;
- 2) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts;
- 3) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined by 42 U.S.C. 1382c(a)(3)) by the parent, grandparent or legal guardian of such individuals, by such individuals, or by a court; and
- 4) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan.

The changes in sections 402.199-402.208 contain the above requirements for trusts established and maintained by the Missouri Family Trust. Therefore, the FSD will continue to disregard resources in special needs trusts.

Officials from the **Department of Social Services (DSS)-MO HealthNet Division (MHD)** state the following:

Section 402.199 currently allows contributions to the trust to be used for supplemental services that are not part of basic support provided by governmental programs to certain persons with mental or physical impairments as described in the statute.

While current statute is interpreted as requiring the disregard of trust accounts as a resource when determining eligibility for medical assistance under MO HealthNet, the new language strengthens this requirement by stating that all state agencies shall disregard trust accounts as a resource when determining eligibility.

ASSUMPTION (continued)

Subsection 1 alters the definition of persons affected by this statute. The definition has been changed from persons with "...a mental or physical impairment that substantially limits one or more major life activities, whether the impairment is congenital or acquired by accident, injury or disease" to persons with "disabilities". According to the FSD this change will not affect the number of individuals affected by this statute. Therefore, there is no fiscal impact anticipated due to this section.

Current language in Section 402.215.2(9)(10) and (11) distinguishes the source of contributions made to trusts, i.e., a distribution from an estate, recovery of damages due to personal injury, or assets of the beneficiary. Section 402.215 has been repealed and replaced with new language in Section 402.203 which does not make these distinctions. This lack of distinction may present third-party liability collection issues for the MO HealthNet Division. In May, 2008 the U.S. Supreme Court affirmed the Eighth Circuit Court's decision in Arkansas Dept. of Health and Human Services v. Ahlborn, holding that a state's Medicaid department will be limited to reimbursement from only that portion of a judgment or settlement that represents payment for medical expenses and that now, states are prohibited from seeking reimbursement for Medicaid costs from settlement proceeds that were intended to cover items other than medical expenses, such as pain and suffering, and wage loss. The new language of Section 402.203, without the distinction of the source of assets in trusts would prevent the identification of proceeds attributable to medical expenses leading to further investigation thus delaying or possibly preventing collection.

It is not known how often this would occur or the amount of cash recoveries that might be lost.

New Sections 402.203-402.204 address how assets in first or third party trust accounts would be disbursed following the death of the beneficiary. Authorizing the trust to retain 25% of the assets off the top will reduce the amount of monies available to the state to reimburse the state for medical assistance paid by the state.

Changing the trust definition and allowing the trust to retain 25% of the assets that are in the trust when the beneficiary dies, will both impact potential recoveries, but the amount attributable to each provision individually is unknown. However, to put this into perspective, there were \$23.1 million of total cash recoveries by MHD staff in FY10 of which cash recoveries attributable to special needs trusts would be about 2% or \$462,000 ($\$23.1 \text{ mill} \times 2\% = \$462,000$). Therefore, the fiscal impact due to this section is Unknown < \$462,000 (\$169,600 Third Party Liability).

ASSUMPTION (continued)

Oversight assumes, because the reduction to recoveries is speculative, that the DSS will not incur significant costs related to this proposal. If a fiscal impact were to result, the DSS may request additional funding through the appropriations process.

In response to a previous version of this proposal, officials from the **Department of Social Services (DSS)-Division of Legal Services (DLS)** assume no fiscal impact on DLS. DLS defers to DSS/MHD and DSS/FSD for an analysis of the fiscal impact of this legislation on the programs administered by those Divisions.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
	<u>\$0</u>	<u>\$0</u>	<u>\$0</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.

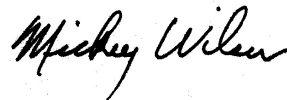
FISCAL DESCRIPTION

The proposed legislation appears to have no fiscal impact.

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 Administration-Administrative Hearing Commission
Office of the Attorney General
Office of the State Courts Administrator
Department of Elementary and Secondary Education
Department of Insurance, Financial Institutions and Professional Registration
Department of Mental Health
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services
Missouri Governor
Missouri House of Representatives
Missouri Senate
Office of the Secretary of State
Missouri State Treasurer



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