

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0511-02
Bill No.: SB 65
Subject: Abortion
Type: Original
Date: January 25, 2011

Bill Summary: This legislation modifies provisions relating to abortion with respect to viability.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	(Less than \$102,760)	(Less than \$100,000)	(Less than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Less than \$102,760)	(Less than \$100,000)	(Less than \$100,000)

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 8 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 188.015 & 188.030:

Officials from the **Missouri State Treasurer, Missouri House of Representatives, Office of the State Courts Administrator, Missouri State Highway Patrol, Missouri Senate, Office of Administration-Budget and Planning** and the **Office of Prosecution Services** each assume the proposal would have no fiscal impact on their respective agencies.

Officials from the **Office of the State Public Defender (SPD)** state for purposes of the proposal, the SPD cannot assume existing staff will provide competent, effective representation for any new cases arising where indigent persons are charged with the proposed new crime of knowingly performing or inducing an abortion of an unborn child. A new class C felony.

While the number of new cases may be too few or uncertain to request additional funding for this specific proposal, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all cases.

Oversight assumes the SPD could absorb the additional caseload that may result from this proposal within existing resources. Oversight assumes any significant increase in the workload of the SPD would be reflected in future budget request.

Officials from the **Department of Social Services (DSS)** states although this proposal creates the possibility for an increased number of extremely premature infants, who would require expensive medical care, the proposal does not address who would have the responsibility for the care and custody of such children. Therefore, no direct fiscal impact to the DSS can be established.

Officials from the **Department of Health and Senior Services (DHSS)** states the proposal requires additional data elements to be added to the Report of Induced Termination of Pregnancy form. It is estimated that an ITSD programmer will be needed for 40 hours in order to modify the current database to allow entry of the additional items required by the proposed legislation. This will result in a one-time cost of \$2,760 (\$69/hour x 40 hours) in FY 2012.

Expenses incurred for the revision of the form will be negligible and will therefore be absorbed through current funding. Printing costs will not be incurred as the form will be made available to providers on a secured website.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** state the DOC, cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through incarceration (FY10 average of \$16.40 per offender, per day, or an annual cost of \$5,985 per inmate) or through supervision provided by the Board of Probation and Parole (FY10 average of \$3.92 per offender, per day or an annual cost of \$1,431 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the Department. Seventeen (17) persons would have to be incarcerated per each fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

In response to a similar proposal from this year (HB213), officials from the **Office of the Attorney General** assumes that costs of implementation could be absorbed with existing resources. However, due to the nature of the provision, AGO assumes this proposal has the potential to be the subject of state and federal litigation. Therefore, potential costs are unknown but AGO assumes will be less than \$100,000.

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

In response to a similar proposal from this year (HB213), officials from the **Department of Insurance, Financial Institutions and Professional Registration** assume the proposed legislation would require the Board of Registration for the Healing Arts to create a way for reporting the required information on abortions. This reporting method could be accomplished under existing appropriation. However, if the board is expected to review each report to determine if they are in agreement with the action taken, then it would require the board to obtain copies of medical records and have these records reviewed by a member of board staff and then reviewed by the full board. This would require additional FTE and expenses which would be requested through the appropriation process.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
GENERAL REVENUE FUND			
<u>Costs - Department of Health and Senior Services</u>			
Program Costs	<u>(\$2,760)</u>	<u>\$0</u>	<u>\$0</u>
<u>Costs - Department of Corrections</u>			
Incarceration/probation costs	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Less than \$102,760)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</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

Sections 188.015 & 188.030:

The proposed legislation modifies provisions relating to abortion.

The definition of "viability" is amended to mean the stage of fetal development when it is the physician's judgment according to accepted obstetrical or neonatal medical standards of care and practice that there is a reasonable likelihood that the life of the unborn child can be sustained outside the mother's womb with or without artificial support.

Except in the case of a medical emergency, no abortion of a viable unborn child shall be performed or induced unless the abortion is necessary to preserve the life of the pregnant woman

FISCAL DESCRIPTION (continued)

whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function or the pregnant woman. For purposes of this legislation, "major bodily function" includes, but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

GESTATIONAL AGE AND VIABILITY: This legislation provides that, except in the case of a medical emergency, prior to performing or inducing an abortion upon any woman, the physician shall determine the gestational age of the unborn child. If the physician determines the unborn child is 20 weeks or more, the physician shall determine if the unborn child is viable. The standards and practices required to determine both gestational age and viability are prescribed under the legislation.

If the physician determines that the gestational age of the unborn child is 20 weeks or more and is viable, the physician shall not perform or induce an abortion upon the woman unless the abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the woman.

UNBORN CHILD WHO IS VIABLE: This legislation prescribes the reporting and certification requirements a physician must follow when performing or inducing an abortion when the unborn child is viable. In addition, before such abortion, the physician shall obtain the agreement of a second physician with knowledge of accepted obstetrical and neonatal practices and standards who shall concur that the abortion is necessary to preserve the life of the pregnant woman, or that continuation of the pregnancy would cause a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman. The second physician shall not have any legal or financial affiliation or relationship with the physician performing or inducing the abortion.

The requirements regarding the method or techniques to be used on a viable unborn child and regarding a second physician in attendance are the same as under current law and are prescribed under the legislation.

UNBORN CHILD WHO IS NOT VIABLE: If the physician determines that the gestational age of the unborn child is 20 weeks or more, and further determines that the unborn child is not viable and performs or induces an abortion upon the woman, the physician shall report such

FISCAL DESCRIPTION (continued)

findings and determinations and the reasons for such determinations to the health care facility in which the abortion is performed and to the State Board of Registration for the Healing Arts, and shall enter such findings and determinations in the medical records of the woman and in the individual abortion report submitted to the Department of Health and Senior Services.

PENALTIES: Any person who knowingly performs or induces an abortion of an unborn child in violation of the provisions of this legislation shall be guilty of a Class C felony, and upon conviction, shall be imprisoned for a term of not less than one year and shall be fined not less than ten thousand nor more than fifty thousand dollars.

Any physician who pleads guilty to or is convicted of performing or inducing an abortion of an unborn child in violation of this legislation shall have his or her license to practice medicine in the state of Missouri suspended for a period of three years.

Any hospital or ambulatory surgical center in which an abortion of an unborn child is performed or induced in violation of this legislation shall be subject to suspension or revocation of its license.

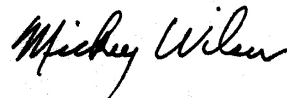
A woman upon whom an abortion is performed or induced in violation of this section shall not be prosecuted for a conspiracy to violate the provisions of this section.

Nothing in this legislation shall be construed as creating or recognizing a right to abortion, nor is it the intention of this section to make lawful any abortion that is currently unlawful. The General Assembly may, by concurrent resolution, appoint one or more of its members who sponsored or co-sponsored this legislation in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

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 Attorney General
Office of Administration-Budget and Planning
Department of Insurance, Financial Institutions and Professional Registration
Department of Corrections
Department of Health and Senior Services
Department of Social Services
Missouri House of Representatives
Missouri Senate
Missouri State Treasurer
Office of the State Courts Administrator
Office of Prosecution Services
Office of the State Public Defender
Missouri State Highway Patrol



Mickey Wilson, CPA
Director
January 25, 2011