

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 2420-01  
Bill No.: SB 567  
Subject: Liability; Sovereign or Official Immunity; Civil Rights; Attorney General, State;  
 Civil Procedure  
Type: Original  
Date: March 31, 2015

Bill Summary: This proposal provides that a person shall be liable for depriving another of a Missouri Constitutional right while acting under the color of law.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	(Unknown Greater than \$100,000)	(Unknown Greater than \$100,000)	(Unknown Greater than \$100,000)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Unknown Greater than \$100,000)</b>	<b>(Unknown Greater than \$100,000)</b>	<b>(Unknown Greater than \$100,000)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Conservation Commission	(Unknown Greater than \$100,000)	(Unknown Greater than \$100,000)	(Unknown Greater than \$100,000)
Highway Fund	(Unknown Greater than \$100,000)	(Unknown Greater than \$100,000)	(Unknown Greater than \$100,000)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(Unknown Greater than \$100,000)</b>	<b>(Unknown Greater than \$100,000)</b>	<b>(Unknown Greater than \$100,000)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 8 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
<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>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</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>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
<b>Local Government</b>	<b>(Unknown Greater than \$100,000)</b>	<b>(Unknown Greater than \$100,000)</b>	<b>(Unknown Greater than \$100,000)</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Attorney General's Office (AGO)** assume this proposal authorizes the AGO to bring civil action on behalf of any citizen against a person acting under color of law, for an alleged violation of constitutional rights of freedom of assembly and petition and from unreasonable search and seizure. The AGO represents various public agencies, including the Highway Patrol, St. Louis Metropolitan Police Department and the Kansas City Police Board, which could be named as defendants. Due to the potential conflict of interest, should the proposal be enacted, the AGO may need to retain outside counsel. Consequently, while the number of cases is unknown, the potential cost to the state could exceed \$100,000.

Officials from the **Missouri Department of Conservation** assume this proposal would have an unknown fiscal impact to their Department. The litigation expenses in the event that someone would make a claim against the Department pursuant to the provision of this legislation is unknown.

Officials from the **St. Louis County Police Department** assume this proposal would have a cost to the St. Louis County as a result of this proposal. St. Louis County could potentially face more civil suits as a result of this bill. This would require man hours for the investigators, hours for the legal research team, court time/cost and other cost associated with defending a lawsuit. St. Louis County is unable to form an estimate due to the unknown nature of how many cases there could be in the future, and the unknown nature of all of the components that would add up to make the cost to the St. Louis County.

Officials from the **Cole County Sheriff's Department** assume since the Attorney General defends State Law Enforcement in both civil and criminal charges, the fiscal impact will be significant since the State will need to retain outside counsel to defend itself from itself

Officials from the **City of Independence Police Department** assume this proposed legislation has the potential to have a serious fiscal impact on all Municipalities as it subjects law enforcement officers and other public officials to numerous potential lawsuits.

ASSUMPTION (continued)

Officials from the **Department of Social Services (DSS)** assume the bill creates a new cause of action for damages and injunctive relief against state agencies and employees. The DSS Division of Legal Services (DLS) does not have sufficient data to provide an accurate estimate of the fiscal impact.

This statute establishes a legal cause of action for damages and injunctive relief against state and local governmental employees who allegedly interferes with a person's rights, privileges or immunities under the Constitution and the laws of the State of Missouri. The liability could arise out of almost any aspect of DSS operations. Because DSS's programs cover a wide range of issues - from Medicaid to child welfare, from blind pensions to TANF, and touching the lives of over a million Missourians each year the scope of the risk of lawsuits, even baseless lawsuits, is very high.

The Attorney General's office (AG) represents DSS employees who are sued for money damages during the course of their employment through the legal expense fund. The bill may pose a potential conflict for the AG's office because the AG's office has enforcement responsibilities under the law. However, in the past the AG's office has provided legal counsel to defend state employees even where a conflict exists because they defend liability under the state legal expense fund. DSS assumes that the AG's office will provide legal representation and pay any liability through the state legal expense fund.

Even in cases where the AG's office represents DSS in court, DLS provides substantial litigation support to the AG's office and legal advice to DSS in the defense of these cases. DLS, for example, routinely works closely with the AG's office in responding to discovery requests and providing technical assistance on specialized areas of the law. Therefore, DLS staff will have a role in defending any lawsuits brought under this new statute.

The new statute is modeled on the federal statute that authorizes a cause of action for damages and injunctive relief in federal court for alleged violations of federal rights. See 42 USC 1983. DLS therefore assumes that litigation of these cases will follow the same general pattern as the similar types of cases in federal court. Lawsuits filed under 42 USC 1983 typically involve complex legal and factual issues. They are time intensive to defend and it sometimes can take several years to bring these cases to a conclusion. It is not unusual for a DLS lawyer to spend well over 20 hours on these types of cases, even where the AG's office is the attorney of record.

ASSUMPTION (continued)

The American Bar Association has recommended a caseload of between 40 and 60 cases for attorneys who handle child and family welfare matters. DLS estimates that a DLS lawyer could provide litigation support of about 20 of these types of cases at a time in addition to their other duties.

DLS does not have data to determine the number of cases that may be filed under this new statute, how long they will take to litigate and how the courts will interpret the scope and extent of liability under this statute.

If we assume that DSS will have 100 such cases pending at one time DLS estimates it could need up to 5 additional FTE per 100 cases.

State Technical Assistance Team (STAT) licensed peace officers following current standard law enforcement policies and procedures for legal search and seizures by either obtaining the individual's consent to search or by obtaining search warrants through courts, conduct approximately 150 searches in a calendar year. If passed, current related standard practices, policies and procedures would need to be reevaluated by DPS, STAT and Legal Services to ensure compliance with the new legislation. Fiscal impact of any potential future recompense is unknown, current STAT has no fiscal impact.

Officials from the **Department of Natural Resources**, the **Department of Public Safety - Missouri Highway Patrol**, the **State Emergency Management Agency** and the **Missouri Gaming Commission**, the **Legislative Research**, the **Office of the Lieutenant Governor**, the **Department of Economic Development**, the **Missouri Lottery Commission**, the **Office of the State Public Defender**, the **Department of Agriculture**, the **Administrative Hearing Commission**, the **Office of the Governor**, the **Joint Committee on Public Employee Retirement**, the **Office of the State Courts Administrator**, the **Columbia Police Department**, the **Springfield Police Department**, the **City of Columbia** and the **Platte County Board of Elections** each assume the proposal will have no fiscal impact on their respective organizations.

Since the cost associated with bringing civil action on behalf of any citizen against a person acting under the color of law, for an alleged violation of the constitutional rights of freedom of assembly is unknown, **Oversight** will range the fiscal impact to the General Revenue Fund, the Conservation Commission Fund, the Highway Fund and Local Political Subdivisions as (Unknown Greater than \$100,000).

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
<b>GENERAL REVENUE</b>			
<u>Cost - AGO</u> Outside counsel to represent various public agencies.	(Unknown Greater than <u>\$100,000</u> )	(Unknown Greater than <u>\$100,000</u> )	(Unknown Greater than <u>\$100,000</u> )
<b>ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND</b>	<b>(Unknown Greater than <u>\$100,000</u>)</b>	<b>(Unknown Greater than <u>\$100,000</u>)</b>	<b>(Unknown Greater than <u>\$100,000</u>)</b>
<b>CONSERVATION COMMISSION</b>			
<u>Cost - MDC</u> Legal Expenses	(Unknown Greater than <u>\$100,000</u> )	(Unknown Greater than <u>\$100,000</u> )	(Unknown Greater than <u>\$100,000</u> )
<b>ESTIMATED NET EFFECT TO THE CONSERVATION COMMISSION</b>	<b>(Unknown Greater than <u>\$100,000</u>)</b>	<b>(Unknown Greater than <u>\$100,000</u>)</b>	<b>(Unknown Greater than <u>\$100,000</u>)</b>
<b>HIGHWAY FUND</b>			
<u>Cost - MoDOT</u> Legal Expenses	(Unknown Greater than <u>\$100,000</u> )	(Unknown Greater than <u>\$100,000</u> )	(Unknown Greater than <u>\$100,000</u> )
<b>ESTIMATED NET EFFECT TO THE HIGHWAY FUND</b>	<b>(Unknown Greater than <u>\$100,000</u>)</b>	<b>(Unknown Greater than <u>\$100,000</u>)</b>	<b>(Unknown Greater than <u>\$100,000</u>)</b>

<u>FISCAL IMPACT - Local Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
<b>LOCAL POLITICAL SUBDIVISIONS</b>			
<u>Cost - Local Municipalities</u>	(Unknown	(Unknown	(Unknown
Legal Expenses	Greater than <u>\$100,000</u> )	Greater than <u>\$100,000</u> )	Greater than <u>\$100,000</u> )
<b>ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS</b>	<b>(Unknown Greater than <u>\$100,000</u>)</b>	<b>(Unknown Greater than <u>\$100,000</u>)</b>	<b>(Unknown Greater than <u>\$100,000</u>)</b>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

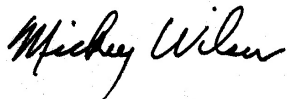
FISCAL DESCRIPTION

This act states that any person acting under the color of law who deprives a person of any right or privilege granted by the Missouri Constitution or laws of this state, or interferes by threats, intimidation or coercion with a person's enjoyment of the right to peaceable assemble or right against unreasonable search and seizure shall be liable to the party injured. Under the act, the Attorney General is authorized to bring a civil action on behalf of the injured party.

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

Attorney General's Office  
Department of Public Safety  
Department of Natural Resources  
Missouri Department of Conservation  
Department of Social Services  
Legislative Research  
Office of the Lieutenant Governor  
Department of Economic Development  
Missouri Lottery Commission  
Office of the State Public Defender  
Department of Agriculture  
Administrative Hearing Commission  
Office of the Governor  
Joint Committee on Public Employee Retirement



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