

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4033S.01I
Bill No.: SB 651
Subject: Business and Commerce; Employees-Employers; Political Subdivisions; State
Departments
Type: Original
Date: January 31, 2022

Bill Summary: This proposal creates new provisions prohibiting vaccination mandates imposed by employers.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue Fund*	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on General Revenue	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

*Oversight notes this proposal could possibly create legal exposure for the state government and/or local political subdivisions.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Other State Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Legal Expense Fund*	\$0	\$0	\$0
Colleges and Universities	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

Numbers within parentheses: () indicate costs or losses.

*LEF will net to zero.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Various Federal Funds*	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

*The potential “(Unknown)” fiscal impact to various state agencies could be quite substantial, depending upon decisions by the courts and actions taken by the federal government.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
All State and Federal	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Total Estimated Net Effect on FTE	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

☐ Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Local Government	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration (OA)** assume the proposal has the potential to increase costs to the state Legal Expense Fund (LEF) for actions alleging discrimination against a state employee in connection with their official duties on behalf of the state, due to the addition of an unlawful discriminatory practice.

The state self-assumes its own liability under the LEF, Section 105.711 RSMo. It is a self-funding mechanism whereby funds are made available for the payment of any claim or judgment rendered against the state in regards to the waivers of sovereign immunity or against employees and specified individuals. Investigation, defense, negotiation or settlement of such claims is provided by the Office of the Attorney General. Payment is made by the Commissioner of Administration with the approval of the Attorney General.

Oversight notes officials from OA assume this provision may prompt causes of action against various state agencies throughout the state. If the state is found liable, there may be additional payouts from the State Legal Expense Fund.

Oversight will assume the net fiscal impact to the Legal Expense Fund will be \$0 due to transfer in from General Revenue, Federal Funds, and Other State Funds for various state agencies in the fiscal note.

Officials from the **Department of Mental Health (DMH)** assume the proposal prohibits any employer, private or public, from conditioning employment or continued employment on COVID-19 vaccination. (Section 290.147) It establishes a cause of action against employers in violation of this section and authorizes assessment of economic, noneconomic, and punitive damages.

This provision does not define how causation from immunization to injury will be traced. Further, the provision does not identify which entity is responsible for determining whether an injury was caused by an immunization, which could implicate workers compensation. Further clarification is needed in the proposed language to address these issues.

Officials from the **Department of Health and Senior Services (DHSS)** note:

It is unknown if damages will be awarded related to vaccines, therefore DHSS has an unknown impact for the proposed legislation.

Officials from the DMH and DHSS both assume the proposal will have direct fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, **Oversight** will reflect an Unknown impact to a Federal Funds in the fiscal note.

Official from the **Department of Public Safety – Veterans Commission (MVC)** note:

MVC received approximately \$59 million in per diem payments through the VA State Veterans Homes Per Diem Grant Program during state fiscal year 21. If MVC does not comply with federal regulations, MVC would lose all of its federal funding and may lose its Recognition and Certification as a VA State Skilled Care Home.

MVC currently holds contracts with entities that require COVID vaccinations for their employees. Any company MVC hires which also receives reimbursement from CMS will be subject to vaccination requirements. For example, the pharmacy vendor, skilled therapy vendor, dietary service vendor, wound care vendor, hospice vendors, lab vendors, etc. MVC also has agreements in place with the US Department of Veterans Affairs to provide care and service; they also require vaccinations for employment. If MVC were prohibited from contracting healthcare services with these vendors the MVC would assume financial responsibility for hiring/contracting qualified independent professionals to perform these necessary services who are not affiliated with or receiving reimbursement from CMS. MVC would have to close Veterans Homes if it could not contract the services listed above. This Fiscal impact could exceed \$75M.

CFR 59.110 “Recapture Provisions” allows the VA to recover the federal construction grant funds if the facility does not maintain services previously specified in the construction Memorandum of Understanding between VA and MVC for 20 years.

Most projects take 2 years from start of design to end of construction. The 5 previous projects total \$28.7 million in federal dollars. The average revenue received over a 3 year period is \$9.55 million. An average calculation over the previous 20 years is \$191 million.

In addition, the cost of the original construction of facilities constructed since 2000 is approximately \$68.8 million. Included in this number is the construction of all 5 Veterans cemeteries, the Mt. Vernon Veterans Home, and the Warrensburg Veterans Home.

The language as it relates to the construction grant program could cost MVC in excess of \$260 million in “Recapture Provisions”.

Oversight notes that officials from the DPS-MVC assume the proposal will have a direct fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect DPS-MVS’s potential reduction in Federal Revenues from \$0 to (Unknown) in the fiscal note.

Officials from the **University of Missouri System** note:

If the federal mandate is upheld by the courts and this bill prohibits compliance with the federal mandate, the university would lose in excess of \$76 million of federal contracts. If the federal mandate is upheld as a condition of participation in Medicare and Medicaid and this bill

prohibits compliance with the federal mandate, it could result in a loss of \$547.4 million annually.

Oversight notes that officials from the University of Missouri System assume the proposal will have a direct fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect University of Missouri's potential reduction in Federal Revenues \$0 to (Unknown) in the fiscal note.

Officials from the **University of Central Missouri** assume the proposal will have direct indeterminate fiscal impact due to uncertainty of application.

Oversight notes that this provision may prompt causes of action against the colleges and universities throughout Missouri for violations of this proposal.

Officials from the **City of Kansas City** assume the proposal could have a negative fiscal impact on the City of Kansas City, Missouri, in an indeterminate amount if it increases Kansas City's exposure to liability.

Oversight notes that this provision may prompt cause of action against various political subdivisions throughout the Missouri for violations of this proposal. If the organizations is found liable, there may be additional payouts from local governments.

Therefore, **Oversight** will range the cost to political subdivisions from \$0 (does not increase litigation) to an Unknown cost (increased claims related to unlawful practices) for the various political subdivisions in the fiscal note.

Officials from the **Attorney General's Office, Office of Administration - (Administrative Hearing Commission and Budget and Planning), Department of Economic Development, Department of Elementary and Secondary Education, Department of Higher Education and Workforce Development, Department of Natural Resources, Department of Corrections, Department of Labor and Industrial Relations, Department of Revenue, Department of Public Safety (Division of Alcohol and Tobacco Control, Capitol Police, Fire Safety, Office of the Director, Missouri Gaming Commission, Missouri Highway Patrol and State Emergency Management Agency), Missouri Department of Agriculture, Missouri Department of Conservation, Missouri Ethics Commission, Missouri Department of Transportation, MoDOT & Patrol Employees' Retirement System, Petroleum Storage Tank Insurance Fund, Office of the State Public Defender, Office of the Governor, Office of the State Auditor, Office of the State Treasurer, Missouri Senate, Missouri House of Representatives, Joint Committee On Education, Joint Committee on Public Employee Retirement, Legislative Research, Oversight Division, Missouri Lottery Commission, Missouri Consolidated Health Care Plan, Missouri Higher Education Loan Authority, Missouri State Employee's Retirement System, Office of the State Courts Administrator, and the State Tax Commission** each assume the proposal will have no fiscal impact on their

respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Officials from the **Department of Commerce and Insurance** defer to the OA for the potential fiscal impact of this proposal.

Officials from the **City of Springfield, Phelps County Sheriff, Springfield Police Department, Kansas City Police Department** and **St. Louis County Police Department** each assume the proposal will have no fiscal impact on their respective organizations. Therefore, Oversight will reflect a zero impact in the fiscal note for these entities.

Rule Promulgation

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** note 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 its 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 SOS is provided with core funding to handle a certain amount of activity each year. **Oversight** assumes SOS could absorb the costs related to this proposal. Therefore, Oversight will reflect zero fiscal impact on the fiscal note for above agency.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims (p.3)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT TO GENERAL REVENUE FUND	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
OTHER STATE FUNDS			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims (p.3)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT TO OTHER STATE FUNDS	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
FEDERAL FUNDS			
<u>Loss of Revenue</u> DMH – Medicaid & Medicare Funds (p.3)	(Unknown)	(Unknown)	(Unknown)
<u>Loss of Revenue</u> DHSS - Division of Regulation and Licensure (DRL) (p.3-4)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Loss of Revenue</u> - DPS-MVC–Recapture Provisions (p.3,4)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Loss of Revenue</u> Medicaid & Medicare Funds - University Missouri System (p.5)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO FEDERAL FUNDS	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

<u>FISCAL IMPACT – State Government</u> (continued)	FY 2023 (10 Mo.)	FY 2024	FY 2025
COLLEGES AND UNIVERSITIES			
<u>Cost - Colleges and Universities</u> Potential increase in claims (p.5)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
LOCAL POLITICAL SUBDIVISIONS			
<u>Cost</u> Potential increase in claims (p.5)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

FISCAL IMPACT – Small Business

Small businesses servicing state agencies, colleges, universities, and political subdivisions will be required to comply with revised sections. If a small business fails to comply, it could be held liable for those actions as a result of this proposal.

FISCAL DESCRIPTION

Under this act, no private or public employer may require an employee or prospective employee to receive a vaccination against COVID-19 as a condition of commencing or continuing employment.

Any employee of an employer shall have a cause of action against such employer if:

- The employee is required, as a condition of commencing or continuing employment, to receive a vaccination against COVID-19; or

· The employer discharges, disciplines, retaliates against, fails to promote, or otherwise discriminates against an employee or prospective employee who opposes an employer's requirement to receive any vaccine.

The court shall award damages to any employee adversely affected by an employer's actions, including but not limited to, economic, noneconomic, and punitive damages, as well as back pay or reinstatement, with back pay plus three times the employee's back pay plus fringe benefits or prospective wages and benefits. If the employee is the prevailing party, a court may also require reasonable attorney's fees and court costs of the employee be paid by the employer.

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

Office of Administration

Administrative Hearing Commission

Budget and Planning

Department of Commerce and Insurance

Department of Economic Development

Department of Elementary and Secondary Education

Department of Higher Education and Workforce Development

Department of Health and Senior Services

Department of Natural Resources

Department of Corrections

Department of Revenue

Department of Public Safety

Division of Alcohol and Tobacco Control

Capitol Police

Fire Safety

Office of the Director

Missouri Gaming Commission

Missouri Highway Patrol

Missouri Veterans Commission

Missouri National Guard

State Emergency Management Agency

Missouri Department of Agriculture

Missouri Department of Conservation

Missouri Ethics Commission

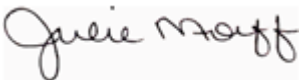
Missouri Department of Transportation

MoDOT & Patrol Employees' Retirement System

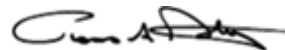
Office of Administration

Petroleum Storage Tank Insurance Fund

Office of the State Public Defender
Office of the Governor
Office of the State Auditor
Office of the State Treasurer
Missouri Senate
Missouri House of Representatives
Joint Committee on Education
Joint Committee on Public Employee Retirement
Legislative Research
Oversight Division
Missouri Lottery Commission
Missouri Consolidated Health Care Plan
Missouri Higher Education Loan Authority
Missouri State Employee's Retirement System
Office of the State Courts Administrator
University of Missouri System
University of Central Missouri
State Tax Commission
City of Kansas City
City of Springfield
Springfield Police Department
Phelps County Sheriff
Kansas City Police Department
St. Louis County Police Department



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January 31, 2022



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