

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3736H.01I
Bill No.: HB 1768
Subject: Employees - Employers; Health Care; Health, Public
Type: Original
Date: January 12, 2022

Bill Summary: This proposal prohibits discrimination in employment based on covid-19 vaccination status.

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 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.

*LEA Fund 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)

*Potentially significant loss of federal funds depending upon rulings 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
Total Estimated Net Effect on FTE	0	0	0

- ☒ 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 **Department of Health and Senior Services (DHSS)** note:

The Division of Regulation and Licensure, Sections for Long Term Care Regulation and Health Standard and Licensure are responsible to regulate and conduct inspections in federally certified Long-Term Care Facilities, Hospitals and other healthcare facilities. DRL is required to enforce federal regulations in these healthcare facilities through a formal, written agreement with the Centers for Medicare and Medicaid Services (CMS). CMS recently published an Interim Final Rule requiring all staff in certified health care settings receive the COVID vaccine. This legislation will restrict the ability of healthcare facilities to require staff to be vaccinated, which may result in them being terminated from the Medicare and Medicaid programs. DRL staff will no longer received Medicare or Medicaid funding to regulate or conduct inspections in these facilities.

Section 292.649.2 An employer shall not discriminate against an employee in compensation or in a term, condition, or privilege of employment based on the employee's COVID-19 vaccination status.

In Missouri, 510 out of 534 skilled nursing facilities and intermediate care facilities are certified to participate in Medicare and/or Medicaid. As a provider of Medicare/Medicaid, they are required to follow federal regulations and requirements, as directed by Centers for Medicare and Medicaid Services (CMS). Additionally, there are 8 hospitals in the state of Missouri with a certified Medicare and/or Medicaid skilled nursing facility unit within them.

On November 4, 2021, CMS posted in the Federal Register a requirement for Medicare and Medicaid-certified providers- requiring staff working in those settings to be fully vaccinated against COVID-19 by January 4, 2022- unless they have a medical or religious exemption. On November 29 and November 30, 2021, the United States District Court for the Eastern District of Missouri and United States District Court for the Western District of Louisiana issued preliminary injunctions against the implementation and enforcement of the Interim Final Rule against Medicare and Medicaid-certified providers. CMS has appealed both of these decisions, and has filed motions for stays of these orders. CMS has suspended activities related to the implementation and enforcement of this rule pending future developments in the litigation. If the United States District Court finds CMS has the authority to require vaccination of employees in certified nursing facilities and hospitals, providers will be placed in a position of either complying with the federal requirements for vaccination of their employees or terminating from

Medicare and/or Medicaid or complying with section 191.716 or 292.644. Failure to comply with CMS' requirement could potentially affect 35,738 Missourians living in certified beds under Chapter 198 RSMo and up to 507 Missourians, living in SNF certified beds in hospitals requiring them to fund their stay privately or be discharged.

This proposed legislation could have an unknown impact of up to \$15 million to the Division of Regulation and Licensure (DRL).

Officials from the **Department of Health and Senior Services** 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 reduction to Federal Funds of an Unknown amount in the fiscal note.

Officials from the **Department of Mental Health (DMH)** assume the proposal adds Section 292.649, which prohibits discrimination employment based on COVID-19 vaccination status. This requirement may put some Department of Mental Health (DMH) facilities and agencies at odds with federal requirements for licensure and/or Centers of Medicare & Medicaid funding. Due to the uncertainty surrounding a federal vaccination mandate, DMH cannot calculate a fiscal impact on the Department at this stage; therefore, the fiscal impact to the Department is unknown at this time.

Officials from the DMH assume the proposal will have direct fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a potential Unknown impact to a Federal Funds for DMH 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 who also receives reimbursement from CMS will be subject to vaccination requirements. For example, our 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 our Veterans Homes if we 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 MOU between VA and MVC for 20 years.

Most projects take 2 years from start of design to end of construction. Our 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 a potential impact to DPS-MVS’s of Federal Revenues 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 reduction in Federal Revenues totaling \$623.4 million annually in the fiscal note.

Additionally, **Oversight** notes that this provision may prompt cause of action against the state agencies, colleges, universities, and political subdivisions for violations of this proposal. If the state is found liable, there may be additional payouts from the State Legal Defense Fund.

Oversight will range the fiscal impact to the Legal Expense Fund from \$0 (does not increase litigation) to an “Unknown” cost (increased claims related to unlawful practices) to General Revenue, Federal Funds, Other State Funds and Political Subdivisions Funds in the fiscal note.

Officials from the **Attorney General’s Office, Office of Administration - Administrative Hearing Commission, Office of Administration - 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 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 National Guard, 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, 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 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 **City of Hughesville, City of Springfield, Phelps County Sheriff, Kansas City Police Department, St. Louis County Police Department and Northwest Missouri State University** 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.

Officials from the **Office of the Secretary of State (SOS)** assume that many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The Secretary of State's office 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 Secretary of State's office for Administrative Rules is less than \$5,000. The Secretary of State's office recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, 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, 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. If multiple bills pass which require additional staffing and duties at substantial costs.

<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	\$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	\$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> DHHS - Division of Regulation and Licensure (DRL) (p.3-4)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Loss of Revenue</u> DMH – Medicaid & Medicare Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Loss of Revenue</u> - DPS-MVC– Recapture Provisions (p.4-5)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Loss of Revenue</u> Medicaid & Medicare Funds - University Missouri System (p.5)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Cost</u> - Potential increase in LEF claims	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT TO FEDERAL FUNDS	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>FISCAL IMPACT - State Government</u> (continued)	FY 2021 (10 Mo.)	FY 2022	FY 2023

LEGAL EXPENSE FUND (0692)			
<u>Transfer In</u> - from GR, Federal, and Other State Funds Potential increase in claims	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Transfer Out</u> - payment of discrimination claims	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT TO THE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
COLLEGES AND UNIVERSITIES			
<u>Cost</u> - Colleges and Universities Potential increase in claims	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>

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

FISCAL IMPACT – Small Business

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

FISCAL DESCRIPTION

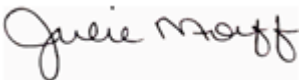
This bill prohibits an employer to discriminate against an employee in compensation or in a term, condition, or privilege of employment based on the employee's COVID-19 vaccination status.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

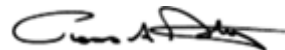
SOURCES OF INFORMATION

Attorney General's Office
Office of Administration
Department of Commerce and Insurance
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 Revenue
Department of Public Safety
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
State Tax Commission
City of Hughesville
City of Springfield
Phelps County Sheriff
Kansas City Police Department
St. Louis County Police Department
Northwest Missouri State University



Julie Morff
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January 12, 2022



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