

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5551H.02C
 Bill No.: HCS for HB 2771
 Subject: Consumer Protection; Professional Registration and Licensing
 Type: Original
 Date: April 7, 2022

Bill Summary: This proposal establishes the Consumer Legal Funding Model Act and the Civil Litigation Funding Act.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue Fund	(\$58,815 to \$61,750)	(\$61,280 to \$62,995)	(\$63,133 to \$65,554)
Total Estimated Net Effect on General Revenue	(\$58,815 to \$61,750)	(\$61,280 to \$62,995)	(\$63,133 to \$65,554)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Information Technology Trust Fund	(\$76,000)	\$0	\$0
Division of Finance Fund	(\$5,000 to \$7,000)	(\$5,000 to \$7,000)	(\$5,000 to \$7,000)
Total Estimated Net Effect on <u>Other</u> State Funds	(\$81,000 to \$83,000)	(\$5,000 to \$7,000)	(\$5,000 to \$7,000)

Numbers within parentheses: () indicate costs or losses.

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

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue Fund	1 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	1 FTE	1 FTE	1 FTE

- 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	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Sections 436.550 – 436.580 - Consumer Legal Funding Model Act

Officials from the **Department of Commerce and Insurance (DCI)** assume House Bill 2771 establishes the “Consumer Legal Funding Model Act”. Under the provisions of the bill a consumer legal funding contract is a nonrecourse consensual transaction where a consumer legal funding company “purchases and a consumer assigns to the company a contingent right to receive an amount of the potential proceeds of a settlement, judgement, award, or verdict” obtained in a consumer legal claim against another third party.

House Bill 2771 requires that prior to a consumer legal funding company engaging in the business of consumer legal funding they must be registered with the Department of Commerce and Insurance (DCI).

The Division of Finance (DOF) within DCI has issued active licenses to approximately 10 – 15 business that offer this type of product under the provision of Chapter 367. Because of this, it is assumed that enforcement and implementation of this proposal will be the responsibility of DOF.

If these businesses were required to change their licenses to a registration under Sections 436.550-436.570, DOF estimates 10-15 licenses would not be renewed under Chapter 367, resulting in a loss to the Division of Finance Fund (0550) \$5,000-\$7,500 per year.

Under this proposal those same entities would most likely then apply for a consumer legal funding registration. Section 436.570.2 requires an initial application fee of \$500 and a registration renewal fee every two years of \$200.

Based on the current estimated number of businesses of which DOF is aware, this would generate revenue of \$5,000-\$7,500 in the first year and \$2,000-\$3,000 every other fiscal year thereafter. The bill provides no indication of where these funds would be deposited. It is assumed this revenue would be credited to General Revenue.

In summary, DCI assumes a loss of \$5,000-\$7,000 each year to the Division of Finance Fund and a revenue of \$5,000-\$7,000 in FY 2023 and \$2,000-\$3,000 in FY 2025 as a result of the changes in this proposal.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the fiscal impact estimated by DCI in the fiscal note.

DCI states the operating budget of the DOF, which is subject to appropriation, comes from the entities it regulates. Missouri law requires that the expenses incurred by the division “shall be charged to and paid” by the corporation “for whom they were incurred or performed”. (Section 361.170). Because the bill provides that a consumer legal funding contract is not subject to any statutory or regulatory provisions governing loans, and due to the statutory limitations of the use of the Division of Finance Fund, an appropriation of general revenue would be needed to implement the provisions of this bill.

Based on the number of licensees currently licensed under Chapter 367 that would now be required to seek a registration from DOF it is estimated that for each applicant, investigation by an Examiner specified in 436.570.3 would require eight hours at \$322.80 per applicant (10-15 applicants X \$322.80 = \$3,228- \$4,842). The processing and issuance of registrations by an Administrative Office Support Assistant would require an hour each at \$18.37 per registration (10-15 applicants X \$18.37 = \$184-\$276).

Pursuant to subsection 7, the Consumer Legal Funding companies must file their contract forms with the department. Review and cataloging of these forms by an Examiner would require an estimated hour for each form. It is assumed each registrant would file one form per year at \$40.35 per form (10-15 X \$40.35 = \$404-\$605).

In order to implement the provisions of this bill DOF would be required to promulgate and revise rules. DOF assumes the workload for Sections 436.550-436.570 could be absorbed by existing staff; however, because of the legal restrictions on the use of the department’s current funding sources, an appropriation from general revenue will be required to implement the provisions of the bill.

Listed below is a summary of expenses to the General Revenue Fund as estimated by DCI.

Expenses	FY 2023	FY 2024	FY 2025
Pre-Approval Investigations	(\$3,228 - \$4,842)	\$0	(\$3,228 - \$4,842)
Process Registration	(\$184 - \$276)	\$0	(\$184 - \$276)
Review Forms	(\$404 - \$605)	(\$404 - \$605)	(\$404 - \$605)
Promulgate/Review Rules – Consumer Legal Funding	(\$3,029 - \$4,543)	(\$757, - \$1,514)	(\$757, - \$1,514)
Promulgate/Review Rules – Litigation Finance	(\$3,029 - \$4,543)	(\$757, - \$1,514)	(\$757, - \$1,514)
Total Expenses – General Revenue Fund	(\$9,874 - \$14,809)	(\$1,918 – \$3,633)	(\$5,330 – \$8,751)

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the expenses provided by DCI to the General Revenue Fund.

In response to a previous version, officials from the **Office of the Secretary of State (SOS)** stated this proposal would create a new type of entity that is required to register with SOS if they are not already registered as a different entity type, under chapter 436 RSMo. (550-580)

It is estimated that on average 15 new entities will choose to operate as a litigation financier. All fees will be found in chapter 436. Creations are \$100 and amendments are \$20. The lowest cost possible to the company is represented. While there is the potential of other filings, the table below represents the mandatory filings required to operate in Missouri, generating the following revenue:

FY 2023	12	\$1,200
FY 2024	18	\$1,800
FY 2025	18	\$1,800

As these will be a new filing type and will require an individual to, examine, process, and respond to customer inquiries, one (1) FTE Corporations Specialist 1 is estimated at the base salary of \$35,250 annually. Additional yearly cost for annual reports are included with the notice. No revenue is stated for the report as the bill does not provide for a fee.

SOS also states that the Secretary of State's office is a silo IT department. All changes to software would require working with a third party vendor and/or the Information Technology department at a cost of \$76,000 in FY 2023 to the Technology Trust Fund.

In summary, SOS assumes a cost of \$53,941 in FY 2023, \$59,362 in FY 2024 and \$59,803 in FY 2025 to General Revenue to provide for the implementation of the changes in this proposal. SOS also assumes a cost of \$76,000 in FY 2023 to the Technology Trust Fund.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the revenue and cost as estimated by SOS.

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.

In response to a previous version, officials from the **Office of the Secretary of State (SOS)** noted 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.

In response to a previous version, officials from the **Attorney General's Office** and the **Office of the State Courts Administrator** each assumed 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.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE FUND			
<u>Revenue</u> – DCI §§436.550-436.580 Chapter 436 Registrations (p.3)	\$5,000 to \$7,000	\$0	\$2,000- \$3,000
<u>Revenue</u> – SOS Filing Fees §§436.550-436.580 (p. 5)	\$1,200	\$1,800	\$1,800
<u>Cost</u> – DCI §§436.550-436.580 (p. 4) Administrative Expenses	(\$9,874 to \$14,809)	(\$1,918 to \$3,633)	(\$5,330 to \$8,751)
<u>Cost</u> - SOS §§436.550-436.580 (p. 5)			
Salaries	(\$29,375)	(\$35,603)	(\$35,959)
Fringe Benefits	(\$23,251)	(\$25,514)	(\$25,644)
Equipment and Expense	(\$2,515)	(\$45)	\$0
<u>Total Cost</u> – SOS	(\$55,141)	(\$61,162)	(\$61,603)
<u>FTE Change</u> – SOS	1 FTE	1 FTE	1 FTE
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(\$58,815 to \$61,750)</u>	<u>(\$61,280 to \$62,995)</u>	<u>(\$63,133 to \$65,554)</u>
Estimated Net FTE Change to the General Revenue Fund	1 FTE	1 FTE	1 FTE
<u>FISCAL IMPACT – State Government (continued)</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
TECHNOLOGY TRUST FUND			
<u>Cost</u> – SOS §§436.550-436.580 (p. 5) IT software and equipment cost	(\$76,000)	\$0	\$0
ESTIMATED NET EFFECT TO THE TECHNOLOGY TRUST FUND	<u>(\$76,000)</u>	<u>\$0</u>	<u>\$0</u>

DIVISION OF FINANCE FUND (0550)			
<u>Loss – DCI §§436.550-436.580 (p.3) Chapter 367 Licenses</u>	<u>(\$5,000 to \$7,000)</u>	<u>(\$5,000 to \$7,000)</u>	<u>(\$5,000 to \$7,000)</u>
ESTIMATED NET EFFECT TO THE DIVISION OF FINANCE FUND (0550)	<u>(\$5,000 to \$7,000)</u>	<u>(\$5,000 to \$7,000)</u>	<u>(\$5,000 to \$7,000)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

A litigator financier business could have a direct fiscal impact as a result of this proposal.

FISCAL DESCRIPTION

CONSUMER LEGAL FUNDING MODEL ACT (Sections 436.550 to 436.570, RSMo)

This bill creates the Consumer Legal Funding Model Act" and contains several definitional terms including "Consumer legal funding contract (contract)" in which a consumer legal funding company (company) purchases and a consumer assigns to the company a contingent right to receive moneys from the settlement, judgment, award or verdict from a consumer's legal claim. The bill details the requirements to be included in the contract, which is not considered to be a loan. The company must provide the consumer's attorney with written notice of the contract provided to the consumer within 3 business days of the funding date. The contract is valid for a period of 48 months.

The bill details actions that cannot be taken by the company such as paying or offering to pay or accepting commissions, referral fees, or other forms of consideration from an attorney, medical provider, etc. or intentionally advertising false or misleading information; or receiving any right to or make decisions relating to the conduct of the underlying legal claim or resolution thereof.

The bill provides for disclosures to be included in the contract which are regarded as material terms of the contract. The bill specifies the written language to be contained in the body of the contract such as informing the consumer that if there is no recovery or insufficient money to pay

back the company in full, the consumer will not be obligated to pay the company anything in excess of the recovery, unless the consumer violated the contract.

The bill does not restrict the Attorney General's powers or performance of duties. The company must be registered according to the standards developed by the Department of Commerce and Insurance (DCI) and the bill details provisions relating to denial of applications for registration.

CIVIL LITIGATION FUNDING ACT (Sections 436.571 to 436.580)

This bill requires all civil litigation funding to meet certain specified requirements. This Act applies to any class actions but does not apply to litigation financing provided to commercial enterprises. A "litigation financing transaction" is defined as financing provided to a consumer in return for the consumer assigning a contingent right to receive moneys from the settlement, judgment, award, or verdict from a consumer's legal claim. A litigation financier must be registered with the Secretary of State's Office (SOS) and meet the requirements included in the bill, including the posting of a surety bond of not less than \$50,000. A litigation financier cannot engage in financing transactions in the state unless it is registered with the SOS. In addition, the litigation financier shall file annual reports with the SOS as stated in the bill. The SOS shall release the report and summary to the public after redacting personally identifying information of any consumer. The bill details actions that cannot be taken by the litigation financier which are similar to the actions that cannot be taken by the consumer legal funding company. The written contract must be completely filled in.

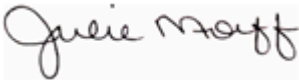
The bill provides for disclosures to be included in the contract which are regarded as material terms of the contract. In addition, the existence of litigation financing arrangements are subject to discovery in personal injury litigation.

The practice of litigation financing is regulated by the DCI and any violation of the provisions of the Act make the contract unenforceable by the parties or any successor-in-interest

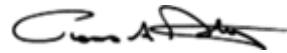
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Office of the Secretary of State
Department of Commerce and Insurance
Joint Committee on Administrative Rules
Office of the State Courts Administrator



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April 7, 2022



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