

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3326-01
Bill No.: HB 1488
Subject: Civil Rights, Employees - Employers, Employment Security
Type: Original
Date: March 10, 2010

Bill Summary: Changes the laws regarding unlawful discriminatory practices in employment.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Federal Funds	(\$978,862)	(\$978,862)	(\$978,862)
Total Estimated Net Effect on <u>All</u> Federal Funds	(\$978,862)	(\$978,862)	(\$978,862)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
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 2011	FY 2012	FY 2013
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Labor and Industrial Relations** assume the fiscal impact was calculated by using the current EEOC and HUD contract amounts. The total for MCHR's current contract with HUD equals \$341,912. The current contract amount with EEOC is currently \$636,950. The fiscal impact at this time is \$978,862.

Officials at the **Office of the Attorney General** assumes that costs are unknown. AGO assumes an increase in the number of cases as the proposal limits all unlawful employment practices it addresses to the Commission, and expects initially increased appeals from determinations of the MCHR. The number of such cases, however, is unknown.

Officials at the **Office of Administration** assume that while the proposed legislation will impact the manner in which employment cases are adjudicated, it is difficult to estimate the actual fiscal impact. Therefore, all costs are unknown.

Officials at the **Missouri Department of Transportation** assume the current standard for a claim under the Missouri Human Rights Act (MHRA) is that discrimination was "a contributing factor" for the adverse employment action. This bill would change the standard to "the motivating factor", except in age discrimination cases, where the standard would be that the adverse action would not have occurred but for the plaintiff's age. This bill would also remove individual liability for employees acting in the employer's interest. This would result in an unknown savings.

Officials at the **Missouri State University** assume a potential savings as it appears that it would make it more difficult for employees to prevail in employment discrimination cases.

Officials at the **City of Kansas City** assume a negative fiscal impact on the City of an indeterminate but significant amount because of the negative impact on MCHR would also then impact the City.

Officials at the **Linn State Technical College** assume a fiscal impact of unknown.

Officials at the **Missouri Department of Conservation, Office of the State Courts Administrator, Moberly Area Community College, University of Central Missouri, Missouri Western State University, Missouri Southern State University, Metropolitan Community College, East Central College, Northwest Missouri State University, University**

ASSUMPTION (continued)

of Missouri, City of Centralia, St. Louis County and the Cass County assume that there is no fiscal impact from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
FEDERAL FUNDS			
<u>Loss - Dept. of Labor</u> EEOC & HUD contracts	<u>(\$978,862)</u>	<u>(\$978,862)</u>	<u>(\$978,862)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>(\$978,862)</u>	<u>(\$978,862)</u>	<u>(\$978,862)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
	<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

This bill changes the laws regarding unlawful discriminatory practices in employment as they relate to the Missouri Human Rights Law and the Workers' Compensation Law.

MISSOURI HUMAN RIGHTS LAW

Under the provisions of the Missouri Human Rights Law, the bill:

- (1) Adds the definition of "because" or "because of" as it relates to a decision or action to be the protected criterion was the motivating factor; however, where the decision or action was alleged premised upon age, they mean that the decision or action would not have occurred but for age;
- (2) Revises the definition of "employer" by specifying that it is a person engaged in an industry affecting commerce who has six or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year. The federal government; an Indian tribe; private

FISCAL DESCRIPTION (continued)

membership clubs, excluding labor organizations; and corporations and associations owned and operated by religious or sectarian groups are not considered employers under the law;

(3) Abrogates certain cases for interpreting and applying the provisions of Chapter 213, Human Rights, as they relate to unlawful employment practices;

(4) Requires courts to rely heavily upon judicial interpretations of Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act of 1967, and the Americans With Disabilities Act for interpreting and applying the provisions of Chapter 213 in employment cases;

(5) Specifies that the legislature intends expressly to abrogate *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. E.D.) as it relates to the necessity and appropriateness of the issuance of a business judgment instruction;

(6) Recommends that certain frameworks for analysis should be considered highly persuasive if an employer in a Chapter 213 case files a Rule 74.04 of the Missouri Rules of Civil Procedure motion as a tool in removing factually insubstantial cases from crowded dockets;

(7) Allows any party in any unlawful discriminatory employment practice complaint to demand a trial by jury;

(8) Specifies that the amount of all damages awarded cannot exceed the amount of the actual back pay plus interest and punitive damages of up to \$50,000 in the case of an employer with six to 100 employees; up to \$100,000 for an employer with 101 to 200 employees; up to \$200,000 for an employer with 201 to 500 employees; and up to \$300,000 for an employer with more than 500 employees. The maximum award amounts do not apply to unlawful discrimination actions regarding housing, commercial real estate loans, and selling or renting by real estate agencies;

(9) Requires the plaintiff to prove the protected criterion was the motivating factor in the alleged unlawful decision or action in any employment-related civil action; and

(10) Prohibits punitive damages from being awarded against the state or any of its political subdivisions.

WORKERS' COMPENSATION LAW

Under the provisions of the Workers' Compensation Law, the bill:

FISCAL DESCRIPTION (continued)

- (1) Specifies that it is unlawful for an employer to retaliate or discriminate in any manner against an employee exclusively because the employee refused to violate the law at the request of someone employed by the employer with supervisory authority over the employee or because the employee reported a violation of the law to an authority of the federal, state, or local government;
- (2) Requires the plaintiff in any civil action for damages for exercising his or her rights under the law that resulted in the discharge of or discrimination against the employee to prove the employer's decision or action was motivated exclusively by the employee exercising his or her rights under the law;
- (3) Specifies that remedies for all unlawful employment practices articulated in the law are exclusive and abrogates any common law causes of action to the contrary; and
- (4) Specifies that the amount of compensatory damages and punitive damages awarded in any action brought by an employee for discharge or discrimination against an employer or former employer cannot exceed \$50,000 for an employer with fewer than 101 employees; \$100,000 for an employer with 101 to 200 employees; \$200,000 for an employer with 201 to 500 employees; and \$300,000 for an employer with more than 500 employees. Compensatory damages do not include back pay or interest on back pay.

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

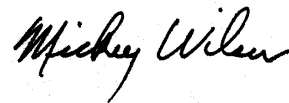
SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Missouri Department of Conservation
Missouri Department of Transportation
Office of Administration
Office of the Attorney General
Office of the State Courts Administrator
East Central College
Linn State Technical College
Metropolitan Community College
Missouri State University
Missouri Southern State University
Missouri Western State University
Moberly Area Community College

JH:LR:OD

SOURCES OF INFORMATION (continued)

Northwest Missouri State University
University of Central Missouri
University of Missouri
Cass County
St. Louis County
City of Centralia
City of Kansas City



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Director
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