

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1110-01
Bill No.: HB 550
Subject: Employees - Employers; Civil Procedure
Type: Original
Date: February 10, 2017

Bill Summary: This proposal changes the laws regarding the Missouri Human Rights Act and employment discrimination.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Legal Expense Fund	Unknown	Unknown	Unknown
Universities and Colleges	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown	Unknown	Unknown

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Federal Funds	\$0 or (\$1,201,900)	\$0 or (\$1,201,900)	\$0 or (\$1,201,900)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$1,201,900)	\$0 or (\$1,201,900)	\$0 or (\$1,201,900)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on FTE	0	0	0

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Local Government	Unknown	Unknown	Unknown

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Labor and Industrial Relations (DOLIR)** assume this proposal could have a negative fiscal impact to their organization based on the following information:

Conformity issues with the Equal Employment Opportunity Commission (EEOC) and the U. S. Department of Housing and Urban Development (HUD) are possible. These federal agencies have determined that the Missouri Human Rights Act is substantially equivalent to the federal civil rights laws they enforce. If the EEOC and/or HUD were to determine Missouri was not in conformity with federal requirements, the Missouri Commission on Human Rights (MCHR) could lose the ability to continue contracting with the EEOC for \$781,900 and/or HUD for \$420,000. The combined loss of \$1,201,900 would eliminate funding for 21.4 of MCHR's 32.7 FTE. MCHR could lose all of the federally funded FTE, 65% of its staff. Losing 65% of its employees would seriously compromise MCHR's ability to carry out its statutory mission properly. A backlog of complaints would most likely develop.

The fiscal impact to MCHR was calculated using the current EEOC and HUD contract amounts.

Officials at the **Department of Conservation (MDC)** assume this proposal could have an unknown positive fiscal impact estimated to be less than \$100,000. This estimate is based on legal costs if a claim was brought against MDC for employment actions.

In response to a similar proposal from this session (HB 676), officials at the **Department of Conservation** stated the proposal would have no impact.

Officials at the **Department of Transportation (MoDOT)** assume this proposal could have an unknown positive fiscal impact based on it changes of contributing to motivating factor, damage caps, and the encouragement of using summary judgment could help reduce merit less claims and forum shopping. MoDOT is an equal opportunity employer and does not discriminate.

In response to a similar proposal from this session (HB 676), officials at the **Office of Administration - General Services (OA-GS)** assumed the proposal could have an unknown positive fiscal impact on the State Legal Expense Fund based on the following information:

The adjustments of legal standards contained in the proposal could potentially result in a reduction in the amount of claims successfully made against the State Legal Expense Fund based on violations of the Missouri Human Rights Act. However, OA-GS is unable to estimate the number or amount of such reduction, based on the reasons more fully set forth in the following two paragraphs.

ASSUMPTION (continued)

The proposal, in 213.010, defines “because” and “because of” for purposes of the Missouri Human Rights Act (“MHRA”) in order to establish a legal standard that the protected criterion was a motivating factor.” OA-GS understands, and therefore assumes, that the legal standard could create a somewhat higher or different burden on plaintiffs under the MHRA. The higher or different burden may result in either fewer MHRA claims being made against the state agencies or employees, or in more successful legal defense against such claims, either of which could result in potential savings to the Legal Expense Fund. However, the amount of potential savings resulting from this proposal cannot be reasonably estimated as the language may create a new legal standard, subject to judicial interpretation, and there is no readily available information that could assist in forming a rational basis for estimating savings. In addition, the number of potential claims, the severity of those claims, and the ultimate costs associated with any settlement or judgment resulting from those claims cannot be forecasted with any degree of assurance to their accuracy.

The state self-assumes its own liability under the state legal expense fund 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 regard 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 assumes although MHRA claims may still be received, the number of claims could potentially decrease and result in a more successful legal defense against such claims based on the new legal standard in this proposal. Since the amount of potential savings resulting from this proposal is unknown (depending on the number of potential claims, the severity of those claims, and the ultimate costs associated with any settlement or judgment resulting from those claims), Oversight will assume an Unknown savings to the Legal Expense Fund, Colleges and Universities, and Local Governments. Oversight will show the impact through the Legal Expense Fund as the funds flow through it from General Revenue, Conservation Commission Fund and Road Fund; therefore, the presentation of the fiscal impact in the fiscal note is less convoluted.

Officials at the **Attorney General’s Office (AGO)** assume that any potential costs arising from this proposal can be absorbed with existing resources. AGO may seek additional appropriations if the proposal results in a significant increase in cases.

Officials at the **Office of Administration - Personnel** and **Office of State Courts Administrator** each assume this proposal will not have a fiscal impact on their respective organizations.

ASSUMPTION (continued)

Officials at the **Callaway County** and **St. Louis County** each assume this proposal will not have a fiscal impact on their respective organizations.

Officials at the **Missouri State University, Missouri Western State University, State Technical College of Missouri, Truman State University,** and **University of Missouri** each assume this proposal will not have a fiscal impact on their respective organizations.

Officials at the school districts of **Kirksville R-III** and **West Plains R-VII** each assume this proposal will not have a fiscal impact on their respective organizations.

Officials at the following cities: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Columbia, Dardenne Prairie, Des Peres, Excelsior Springs, Florissant, Frontenac, Fulton, Gladstone, Grandview, Harrisonville, Independence, Jefferson City, Joplin, Kansas City, Kearney, Knob Noster, Ladue, Lake Ozark, Lee Summit, Liberty, Louisiana, Maryland Heights, Maryville, Mexico, Monett, Neosho, O'Fallon, Pacific, Peculiar, Pineville, Popular Bluff, Raytown, Republic, Richmond, Rolla, Sedalia, Springfield, St. Charles, St. Joseph, St. Louis, St. Robert, Sugar Creek, Sullivan, Warrensburg, Warrenton, Webb City, Weldon Spring and West Plains did not respond to **Oversight's** request for fiscal impact.

Officials at the following counties: Andrew, Atchison, Audrain, Barry, Bollinger, Boone, Buchanan, Camden, Cape Girardeau, Carroll, Cass, Christian, Clay, Cole, Cooper, DeKalb, Dent, Franklin, Greene, Holt, Jackson, Jefferson, Johnson, Knox, Laclede, Lawrence, Lincoln, Maries, Marion, McDonald, Miller, Mississippi, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Perry, Pettis, Phelps, Platte, Pulaski, Scott, Shelby, St. Charles, St. Francois, Taney, Warren, Wayne and Worth did not respond to **Oversight's** request for fiscal impact.

Officials at the following colleges: Crowder, East Central Community College, Harris-Stowe, Jefferson College, Lincoln University, Metropolitan Community College, Moberly Area Community College, Missouri Southern State University, Missouri State University, Northwest Southeast Missouri State University, State Fair Community College, St. Charles Community College, St. Louis Community College, Three Rivers Community College, Truman State University, and the University of Central Missouri did not respond to **Oversight's** request for fiscal impact.

Officials at the following school districts: Arcadia Valley R-2, Aurora R-8, Avilla R-13, Bakersfield, Belton, Benton County R-2, Bismark R-5, Bloomfield R-14, Blue Springs, Bolivar R-I, Bowling Green R-1, Branson, Brentwood, Bronaugh R-7, Campbell R-2, Carrollton R-7, Caruthersville, Cassville R-4, Central R-III, Chilhowee R-4, Chillicothe R-II, Clarkton C-4, Cole R-I, Columbia, Concordia R-2, Crawford County R-1, Crocker R-II, Delta C-7, East Carter R-2,

ASSUMPTION (continued)

East Newton R-6, Eldon R-I, Everton R-III, Fair Grove, Fair Play, Fayette R-3, Forsyth R-3, Fox C-6, Fredericktown R-I, Fulton, Grain Valley, Hancock Place, Hannibal, Harrisonburg R-8, Harrisonville, Hillsboro R-3, Hollister R-5, Humansville R-4, Hurley R-1, Independence, Jefferson City, Kansas City, Kearney R-1, Kennett #39, King City R-1, Kingston 42, Kirbyville R-VI, Laclede County R-1, Laredo R-7, Lee Summit, Leeton R-10, Lewis County C-1, Lindbergh, Lonedell R-14, Macon County R-1, Macon County R-4, Malta Bend, Mehville, Mexico, Middle Grove C-1, Midway R-1, Milan C-2, Moberly, Monroe City R-I, Morgan County R-2, New Haven, Nixa, North St. Francois Co. R-1, Northeast Nodaway R-5, Odessa R-VII, Oregon-Howell R-III, Orrick R-11, Osage County R-II, Osborn R-O, Parkway, Pattonville, Pettis County R-12, Pierce City, Plato R-5, Princeton R-5, Raymore-Peculiar R-III, Raytown, Reeds Springs R-IV, Renick R-5, Richland R-1, Riverview Gardens, Salisbury R-4, Sarcoxie R-2, Scotland County R-I, Sedalia, Seymour R-2, Shelby County R-4, Shell Knob #78, Sikeston, Silex, Slater, Smithville R-2, Special School District of St. Louis County, Spickard R-II, Springfield, St Joseph, St Louis, St. Charles, St. Elizabeth R-4, Sullivan, Tipton R-6, Valley R-6, Verona R-7, Warren County R-3, Warrensburg R-6, Webster Groves, Westview C-6 and the Wright City R-2 School District did not respond to **Oversight's** request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
LEGAL EXPENSE FUND			
<u>Savings - Legal Expense</u>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT TO THE LEGAL EXPENSE FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
UNIVERSITIES AND COLLEGES			
<u>Savings - Colleges and Universities Legal Expense Fund</u>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT TO UNIVERSITIES AND COLLEGES	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
FEDERAL FUNDS			
<u>Loss - DOLIR - MCHR</u>			
Potential loss of federal EEOC and HUD money	\$0 or <u>(\$1,201,900)</u>	\$0 or <u>(\$1,201,900)</u>	\$0 or <u>(\$1,201,900)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	\$0 or <u>(\$1,201,900)</u>	\$0 or <u>(\$1,201,900)</u>	\$0 or <u>(\$1,201,900)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
LOCAL GOVERNMENT			
<u>Savings - Local Political Subdivisions - Legal Expenses</u>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT TO LOCAL GOVERNMENT	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<u>FISCAL IMPACT - Small Business</u>			

A direct fiscal impact could be experienced by small businesses as a result of this proposal.

FISCAL DESCRIPTION

This bill changes the laws regarding unlawful discriminatory employment practices and establishes the "Whistleblower's Protection Act."

UNLAWFUL DISCRIMINATORY EMPLOYMENT PRACTICES

The bill specifies that the term "because" or "because of," as it relates to a decision or action, means that the protected criterion was the motivating factor. The bill also revises the term "employer" by specifying that, with certain exceptions, 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 weeks in the current or preceding year. Chapter 213, RSMo, human rights; Chapter 285, employers and employees generally; and Chapter 287, workers' compensation law, provide the exclusive remedies for all unlawful employment practices described in the bill.

FISCAL DESCRIPTION (continued)

The bill establishes a presumption that, for a fair presentation of a case, a jury must be given an instruction expressing the business judgment rule. The General Assembly expressly intends to abrogate the case of *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. E.D. 2006), and its progeny as it relates to the necessity and appropriateness of the issuance of a business judgment instruction.

The bill further requires the courts to rely heavily on judicial interpretations of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act when interpreting and deciding Missouri Human Rights Act employment discrimination cases.

The bill recommends as highly persuasive two methods to the courts for analyzing employment discrimination cases as a basis for granting summary judgment. The mixed motive and burden shifting analyses are based on court rulings interpreting federal law and the bill abrogates numerous Missouri cases and certain approved jury instructions as specified in the bill.

The bill specifies that an award of damages may include all future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and punitive damages. The amount of damages awarded for each plaintiff cannot exceed the amount of the actual back pay plus interest, and other 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 provisions regarding damage awards do not apply to an alleged violation of Section 213.040, unlawful housing practices; Section 213.045, discrimination in commercial real estate loans; or Section 213.050, discrimination in real estate sales and rental organizations; and Section 213.070, other specified unlawful discriminatory practices by an employer as it relates to housing. Punitive damages shall not be awarded against the state or any of its political subdivisions.

The bill specifies that in an employment-related action brought under Chapter 213, the plaintiff bears the burden of proving that the protected criterion was the motivating factor in the alleged unlawful decision or action. Any party to an action under this section may demand a trial by jury.

WHISTLEBLOWER'S PROTECTION ACT

This bill establishes the "Whistleblower's Protection Act" which codifies existing common law exceptions to the at-will employment doctrine. The provisions of this bill provide the exclusive remedy for all unlawful employment practices specified in the bill.

FISCAL DESCRIPTION (continued)

The bill provides that it is an unlawful employment practice for an employer to discharge or retaliate against an individual because of his or her status as a protected person. The bill defines a "protected person" as a person who has reported to the proper authorities an unlawful act or serious misconduct of the employer that violates a clear mandate of public policy. A "protected person" also includes a person who has refused to carry out a directive issued by the employer that if completed would be a violation of the law, or a person who engages in conduct otherwise protected by statute or regulation. Specified persons are excluded from the definition of a "protected person."

The term "employer" is defined as an entity that has six or more employees, excluding the state and other public bodies, an individual employed by an employer, and certain religious or sectarian groups. The term "proper authorities" is defined as a governmental or law enforcement agency or officer, or the employee's human resources representative employed by the employer.

A protected person aggrieved by a violation of these provisions shall have a private right of action for actual damages, unless a private right of action for damages exists under other statutes or regulations, either federal or state. The only remedies available are back pay, reimbursement of related medical bills, and, if the protected person proves outrageous conduct, an additional double amount as liquidated damages. The court may also award the prevailing party court costs and reasonable attorney fees. Any party to an action under these provisions may demand a trial by jury.

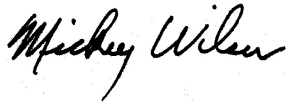
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Department of Conservation
Department of Transportation
Office of Administration - General Services
Attorney General's Office
Office of Administration - Personnel
Office of State Courts Administrator
Callaway County
St. Louis County
Missouri State University
Missouri Western State University

State Technical College of Missouri
SOURCES OF INFORMATION (continued)

Truman State University
University of Missouri
School Districts of:
 Kirksville R-III
 West Plains R-VII

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
February 10, 2017

Ross Strobe
Assistant Director
February 10, 2017