

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1302-01  
Bill No.: HB 676  
Subject: Employees - Employers; Civil Procedures  
Type: Original  
Date: February 10, 2017

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

**FISCAL SUMMARY**

| <b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>          |            |            |            |
|--|------------|------------|------------|
| FUND AFFECTED  | FY 2018    | FY 2019    | FY 2020    |
|  |            |            |            |
| <b>Total Estimated<br/>Net Effect on<br/>General Revenue</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |

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

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 10 pages.

| <b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>                          |                             |                             |                             |
|---|-----------------------------|-----------------------------|-----------------------------|
| 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)        |
|   |                             |                             |                             |
| <b>Total Estimated<br/>Net Effect on <u>All</u><br/>Federal Funds</b> | <b>\$0 or (\$1,201,900)</b> | <b>\$0 or (\$1,201,900)</b> | <b>\$0 or (\$1,201,900)</b> |

| <b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b> |          |          |          |
|---|----------|----------|----------|
| FUND AFFECTED   | FY 2018  | FY 2019  | FY 2020  |
|   |          |          |          |
|   |          |          |          |
| <b>Total Estimated<br/>Net Effect on<br/>FTE</b>          | <b>0</b> | <b>0</b> | <b>0</b> |

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

| <b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b> |                |                |                |
|--|----------------|----------------|----------------|
| FUND AFFECTED                              | FY 2018        | FY 2019        | FY 2020        |
| <b>Local Government</b>                    | <b>Unknown</b> | <b>Unknown</b> | <b>Unknown</b> |

## 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** assume this proposal would have no impact on their organization.

In response to similar proposals from this session (HB 550 and HB 552), officials at the **Department of Conservation (MDC)** assumed these proposals could have an unknown positive fiscal impact estimated to be less than \$100,000. This estimate was based on legal costs if a claim was brought against MDC for employment actions.

Officials at the **Department of Transportation (MoDOT)** assume this proposal could have an unknown positive fiscal impact which is unquantifiable.

MoDOT states, this bill revises the MHRA in several ways to make it more similar to the federal discrimination laws. This bill would still allow suits against individuals as defendants. The bill changes the standard from "contributing factor" to motivating factor, making the standard fairer for both sides. "Motivating factor" is not defined, so the courts would have some room to interpret the definition. The bill adds damage caps based on the size of the employer, and unlike other legislation, the damage caps are multiples of the complainant's annual salary.

ASSUMPTION (continued)

Officials at the **Office of Administration - General Services (OA-GS)** assume this proposal would 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.

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.

ASSUMPTION (continued)

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.

Officials at the **City of Kansas City** assume this proposal would not have a fiscal impact on their organization.

Officials at the **Callaway County** assume this proposal would not have a fiscal impact on their organization.

Officials at the **St. Louis County** assume this proposal should not have a fiscal impact on their organization as long as no suit is brought forth and litigated. If a suit is brought forth and litigated, the costs would be unknown.

Officials at the **University of Central Missouri** assume this proposal could have a minimal fiscal impact on their organization.

Officials at the **Missouri Western State University**, the **Northwest Missouri State University**, the **State Technical College of Missouri**, the **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 **Kansas City**, **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, 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.

ASSUMPTION (continued)

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, Southeast Missouri State University, State Fair Community College, St. Charles Community College, St. Louis Community College, Three Rivers Community College, and the University of 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, 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, 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<br>(10 Mo.)                    | FY 2019                                | FY 2020                                |
|---|--|--|--|
| <b>LEGAL EXPENSE FUND</b>   |  |  |  |
| <u>Savings</u> - Legal Expense  | <u>Unknown</u>                         | <u>Unknown</u>                         | <u>Unknown</u>                         |
| <b>ESTIMATED NET EFFECT TO THE<br/>LEGAL EXPENSE FUND</b>                     | <b><u>Unknown</u></b>                  | <b><u>Unknown</u></b>                  | <b><u>Unknown</u></b>                  |
| <b>UNIVERSITIES AND COLLEGES</b>  |  |  |  |
| <u>Savings</u> - Colleges and Universities<br>Legal Expense Fund              | <u>Unknown</u>                         | <u>Unknown</u>                         | <u>Unknown</u>                         |
| <b>ESTIMATED NET EFFECT TO<br/>UNIVERSITIES AND COLLEGES</b>                  | <b><u>Unknown</u></b>                  | <b><u>Unknown</u></b>                  | <b><u>Unknown</u></b>                  |
| <b>FEDERAL FUNDS</b>  |  |  |  |
| <u>Loss</u> - DOLIR - MCHR<br>Potential loss of federal EEOC and<br>HUD money | \$0 or<br><u>(\$1,201,900)</u>         | \$0 or<br><u>(\$1,201,900)</u>         | \$0 or<br><u>(\$1,201,900)</u>         |
| <b>ESTIMATED NET EFFECT ON<br/>FEDERAL FUNDS</b>                              | <b><u>\$0 or<br/>(\$1,201,900)</u></b> | <b><u>\$0 or<br/>(\$1,201,900)</u></b> | <b><u>\$0 or<br/>(\$1,201,900)</u></b> |
| <u>FISCAL IMPACT - Local Government</u>                                       | FY 2018<br>(10 Mo.)                    | FY 2019                                | FY 2020                                |
| <b>LOCAL GOVERNMENT</b>   |  |  |  |
| <u>Savings</u> - Local Political Subdivisions -<br>Legal Expenses             | <u>Unknown</u>                         | <u>Unknown</u>                         | <u>Unknown</u>                         |
| <b>ESTIMATED NET EFFECT TO<br/>LOCAL GOVERNMENT</b>                           | <b><u>Unknown</u></b>                  | <b><u>Unknown</u></b>                  | <b><u>Unknown</u></b>                  |

### FISCAL IMPACT - Small Business

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, as used in Chapter 213, RSMo, 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.

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.

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. Recommended as highly persuasive are two methods 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.

Any award of actual damages and punitive damages shall not exceed the sum of the amount of the actual back pay and a multiple of the annual salary of the complaining party based upon the number of persons employed by the employer. Any party to an action under this section may demand a jury trial.

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.



## FISCAL DESCRIPTION (continued)

### 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 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 refused to perform or reported to the proper authority an alleged unlawful act that the person had a reasonable belief violates a clear mandate of public policy. A "protected person" does not include a person employed to report or provide a profession opinion on such matters. The term "employer" is defined as an entity that has six or more employees, excluding an individual employed by an employer and certain religious or sectarian groups. The term "proper authority" is defined as a manager or supervisor employed by the employer, a designated employee of the employer, or a governmental or law enforcement agency.

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, liquidated damages in an amount equal to five times the compensatory damages. The court may also award the prevailing party reasonable attorney fees. Any party to an action under these provisions may demand a jury trial.

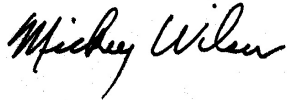
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

## 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  
City of Kansas City  
Callaway County

SOURCES OF INFORMATION (continued)

St. Louis County  
University of Central Missouri  
Missouri Western State University  
Northwest Missouri State University  
State Technical College of Missouri  
Truman State University  
University of Missouri  
School Districts of:  
    Kansas City  
    Kirksville R-III  
    West Plains R-VII



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