

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0790-03
Bill No.: SCS for SB 188
Subject: Employees- Employers; Housing; Public Buildings
Type: Original
Date: February 28, 2011

Bill Summary: This proposal modifies the law relating to the Missouri Human Rights Act and employment discrimination.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	(\$50,045)	(\$57,436)	(\$58,012)
Total Estimated Net Effect on General Revenue Fund	(\$50,045)	(\$57,436)	(\$58,012)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Federal Funds	(\$1,136,479)	(\$1,136,479)	(\$1,136,479)
Total Estimated Net Effect on <u>All</u> Federal Funds	(\$1,136,479)	(\$1,136,479)	(\$1,136,479)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	1 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	1 FTE	1 FTE	1 FTE

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 2012	FY 2013	FY 2014
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Labor and Industrial Relations (DOL)** assume the federal fiscal impact was calculated by using the current EEOC and HUD contract amounts and the costs of additional staff. The total for MCHR's current contract with HUD equals \$374,829. The current contract amount with EEOC is currently \$761,650. The fiscal impact at this time is \$1,136,479.

The fiscal impact for General Revenue was calculated by estimating a 16 percent increase in MCHR's case load if whistler blower language became a new protected category. The state of Maine is the only state that has the whistler blower protection enforced by the Human Rights Agency and whistler blower basis make up approximately 16 percent of their cases load. MCHR received 2,109 complaints in FY10. If this increased by 16 percent due to adding whistler blower as a protected category, this would add 337 new complaints. The Department estimates at minimum MCHR would need 5.00 FTE to absorb the additional workload. Each Human Relations Investigator is required to investigate a minimum of 96 cases a year and most average 96 cases per year. Therefore, 337 divided by 96 additional cases equals 3.5. MCHR would need at least an additional three Human Relations Officers to investigate those cases, one Human Relations Tech for the additional intake calls, and one Senior Office Support Assistant (SOSA) to process the additional paperwork. The salary plus fringe benefits would be \$232,181 in fiscal year 2012, and expense and equipment for five new FTE in 2012 would be \$19,280. In fiscal year 2013 the salary plus fringe benefits would be \$281,404, and expense and equipment for in 2013 would be \$7,380.

Oversight has, for fiscal note purposes only, changed the starting salary for the FTE to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees over the last six months of FY 2010 and policy of the Oversight Subcommittee of the Joint Committee on Legislative Research.

Oversight assumes that it is unclear how many additional complaints would be generated as a result of this proposal. Oversight has shown in the fiscal note the need of DOL to have one FTE Human Relations Officer. Should DOL experience a measurable increase in its workload as a direct result of this proposal then it can request additional FTE in future budget requests.

Oversight assumes DOL's estimate of expense and equipment cost for the new FTE could be overstated. If DOL is able to use existing desks, file cabinets, chairs, etc., the estimate for equipment for fiscal year 2012 could be reduced by roughly \$2,656.

JH:LR:OD

ASSUMPTION (continued)

In response to a previous version of this legislation, officials at the **Office of Administration Division of Personnel** assume if passed, the Division may need to advise agencies and political subdivisions of the newly established statutes. It does not appear to require updates to the Missouri Merit Laws, Chapter 36, RSMo or 1 CSR 20.

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 listed as unknown.

In response to a previous version of this legislation, officials at the **Office of the Attorney General (AGO)** assume 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 **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". This bill would also remove individual liability for employees acting in the employer's interest. This would result in an unknown positive impact for the department.

In response to a previous version of this legislation, officials at the **City of Kansas City** assume this would have a negative impact on the City. It would severely negatively impact Kansas City's ability to enforce its civil rights ordinance. The effect of the bill would be to make it more difficult for persons who believe that they have been discriminated against to bring claims and to receive adequate relief when claims are brought.

Kansas City's Civil Rights Division, as well as the Missouri Commission on Human Rights (MCHR) and the St. Louis Civil Rights Enforcement Agency (CREA), participate in work-sharing agreements with both HUD and the EEOC. A key part of the agreement is that Kansas City's laws remain substantially equivalent to Title VII of the 1964 Civil Rights Act (employment discrimination) and Title VIII of the 1968 Civil Rights Act (Fair Housing Act). If Kansas City's laws are amended such that they are no longer substantially equivalent, which would be the effect of this proposal, then Kansas City would not be able to participate in the respective federal programs. Kansas City receives approximately \$150,000 to \$200,000 from these programs each year. To lose those funds would have a crippling effect on the budget of Kansas City's Civil Rights Division.

ASSUMPTION (continued)

Officials at the **Special School District** assume a positive impact due to lower legal expenses of \$25,000 in defending lawsuits for employee discrimination.

In response to a previous version of this legislation, officials at the **Johnson County** assume this could easily result in \$20,000 to \$30,000 per instance in unnecessary legal fees by expanding the likelihood of incurring complaints of a frivolous nature.

Officials at the **Missouri Southern State University** assume an unknown impact.

Officials at the **City of Raytown, East Central College, Linn State Technical College, Metropolitan Community College, Missouri Department of Conservation, Missouri State University, Missouri Western State University, Northwest Missouri State University, Office of the State Courts Administrator, Parkway School District, St. Louis County, St. Louis Community College, St. Louis Public Schools, University of Central Missouri** and the **University of Missouri** assume that there is no fiscal impact from this proposal.

Officials at the following cities: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Columbia, Dardenne Prairie, Excelsior Springs, Florissant, Frontenac, Fulton, Gladstone, Grandview, Harrisonville, Independence, Jefferson City, Joplin, Kearney, Kirksville, Knob Noster, Ladue, Lake Ozark, Lebanon, Lee Summit, Liberty, Linn, Louisiana, Maryland Heights, Maryville, Mexico, Neosho, O'Fallon, Pacific, Peculiar, Popular Bluff, Republic, 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, Barry, Bates, Boone, Buchanan, Butler, Callaway, Camden, Cape Girardeau, Carroll, Cass, Clay, Cole, Cooper, DeKalb, Franklin, Greene, Hickory, Holt, Jackson, Jasper, Jefferson, Knox, Laclede, Lafayette, Lawrence, Lincoln, Marion, Miller, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Pemiscot, Perry, Phelps, Platte, Pulaski, Scott, St. Charles, St. Francois, Taney, Texas, Warren, and Webster did not respond to **Oversight's** request for fiscal impact.

Officials at the following schools: Blue Springs Public Schools, Branson Public Schools, Columbia Public Schools, Fair Grove Schools, Francis Howell Public Schools, Independence Public Schools, Jefferson City Public Schools, Kansas City Public School Board, Kirksville Public Schools, Lee Summit Public Schools, Mehlville Public Schools, Mexico Public Schools, Nixa Public Schools, Sedalia School District, Sikeston Public Schools, Silex Public Schools, St

ASSUMPTION (continued)

Joseph School District, St. Charles Public Schools, and Sullivan Public Schools did not respond to **Oversight's** request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
GENERAL REVENUE			
<u>Cost - Dept. of Labor</u>			
Personal Service	(\$31,080)	(\$37,669)	(\$38,046)
Fringe Benefits	(\$16,267)	(\$19,716)	(\$19,913)
Equipment and Expenses	<u>(\$2,698)</u>	<u>(\$51)</u>	<u>(\$53)</u>
<u>Total Costs - DOL</u>	<u>(\$50,045)</u>	<u>(\$57,436)</u>	<u>(\$58,012)</u>
FTE Change - DOL	1 FTE	1 FTE	1 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(\$50,045)</u>	<u>(\$57,436)</u>	<u>(\$58,012)</u>
Estimated Net FTE Change on General Revenue	1 FTE	1 FTE	1 FTE
FEDERAL FUNDS			
<u>Loss - Dept. of Labor</u>			
EEOC & HUD contracts	<u>(\$1,136,479)</u>	<u>(\$1,136,479)</u>	<u>(\$1,136,479)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>(\$1,136,479)</u>	<u>(\$1,136,479)</u>	<u>(\$1,136,479)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
	<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

Currently, under the Missouri Human Rights Act (MHRA), a practice is unlawful when the protected trait is a contributing factor in the decision to discriminate. This act changes that standard to a motivating factor standard. The plaintiffs in employment discrimination cases have the burden of proving this standard.

Currently, persons acting in the interest of employers are considered employers under the MHRA and are liable for discriminatory practices. This act modifies the definition of employer to exclude those individuals. The act similarly excludes the United States government, corporations owned by the United States, individuals employed by employers, Indian tribes, certain departments or agencies of the District of Columbia, and private membership clubs from the definition.

The act abrogates all Missouri case law relating to the public policy exceptions to the employment at-will doctrine. Employers are barred from discharging the following persons:

- a person who reports to an unlawful act of the employer or its agent to governmental or law enforcement agencies, officer, or the employee's human resources representative employed by the employer;
- a person who reports to an employer serious misconduct of the employer or its agent that violates a clear mandate of public policy as articulated in a constitutional provision, statute, regulation promulgated pursuant to statute, or a rule created by a governmental body;
- a person who refuses to carry out a directive issued by an employer or its agent that, if completed, would be a violation of the law;
- or a person who engages in conduct otherwise protected by statute or regulation.

In order to be unlawful, the employee's actions shall be a motivating factor leading to the discharge instead of a contributing factor, as is the case under current common law. Prevailing parties in such cases shall not be entitled to attorneys fees.

The Human Rights chapter is intended to be consistent with Title VIII of the Civil Rights Act and follow the work sharing agreement between the commission and the Equal Employment Opportunity Commission. The act directs the courts to rely heavily on judicial interpretations of Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act when deciding MHRA employment discrimination cases.

FISCAL DESCRIPTION (continued)

The act abrogates *McBryde v. Ritenour School District* to require courts to allow a business judgment jury instruction whenever offered by the defendant.

The act recommends two methods to the courts for analyzing employment discrimination cases as a basis for granting summary judgment. The mixed motive and burden shifting analysis are based on court rulings interpreting federal law and the act abrogates numerous Missouri cases in urging the courts to consider the methods highly persuasive.

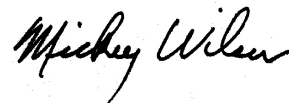
Parties to a discrimination case under the MHRA may demand a jury trial.

Damages awarded for employment cases under the MHRA shall not exceed back pay and interest on back pay and \$50,000 for employers with between 5 and 100 employees, \$100,000 for employers with between 100 and 200 employees, \$200,000 for employers with between 200 and 500 employees, or \$300,000 for employers with more than 500 employees. Punitive damages shall not be awarded against the state of Missouri or political subdivisions in MHRA cases.

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

City of Kansas City
City of Raytown
Department of Labor and Industrial Relations
East Central College
Johnson County
Linn State Technical College
Metropolitan Community College
Missouri Department of Conservation
Missouri Department of Transportation
Missouri Southern State University
Missouri State University
Missouri Western State University
Northwest Missouri State University
Office of Administration
Office of the Attorney General
Office of the State Courts Administrator
Parkway School District
Special School District
St. Louis County
St. Louis Community College
St. Louis Public Schools
University of Central Missouri
University of Missouri



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