

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4644-01  
Bill No.: SB 745  
Subject: Employees-Employers; Housing; Public Buildings  
Type: Original  
Date: February 1, 2016

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Bill Summary: This proposal modifies the law relating to unlawful discrimination.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	Unknown	Unknown	Unknown
<b>Total Estimated Net Effect on General Revenue</b>	<b>Unknown</b>	<b>Unknown</b>	<b>Unknown</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Conservation Commission	Unknown	Unknown	Unknown
Road Fund	Unknown	Unknown	Unknown
Universities and Colleges	Unknown	Unknown	Unknown
<b>Total Estimated Net Effect on Other State Funds</b>	<b>Unknown</b>	<b>Unknown</b>	<b>Unknown</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 11 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>
Federal Funds	\$0 or (\$1,149,985)	\$0 or (\$1,149,985)	\$0 or (\$1,149,985)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 or (\$1,149,985)</b>	<b>\$0 or (\$1,149,985)</b>	<b>\$0 or (\$1,149,985)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>
<b>Total Estimated Net Effect on FTE</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>			
<b>FUND AFFECTED</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>
<b>Local Government</b>	<b>Unknown</b>	<b>Unknown</b>	<b>Unknown</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Office of Administration - General Services (OA/GS)** assume this proposal could have an unknown positive fiscal impact on their organization.

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-General Services understands, and therefore assumes, that the legal standard creates a somewhat higher burden on plaintiffs under the MHRA. The higher 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 creates 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 General Revenue Fund, the Conservation Commission Fund, Road Fund, Colleges and Universities, and Local Governments.

Officials at the **Department of Labor and Industrial Relations** state currently the Missouri Commission on the Human Rights Act (MCHR) contracts with the Equal Employment Opportunity Commission (EEOC) to investigate complaints of discrimination. This is possible because EEOC has determined the MCHR is substantially equivalent to the federal civil rights

ASSUMPTION (continued)

laws the EEOC enforces. The funds from this contract make up the largest part of MCHR's budget.

This proposal has been submitted to both the EEOC and Housing and Urban Development (HUD) for their analysis. Based on HUD's analysis and the EEOC reviews of similar legislation, conformity issues are likely, and the MCHR could lose the ability to contract with EEOC and HUD.

If the revised language is adopted, the MCHR may not be able find a violation in cases where the EEOC would find cause under a mixed-motive theory and in "same decision" direct evidence cases. Further, Section 213.101.4(2) does not allow for disparate impact analysis, which would limit MCHR's ability to find violations in cases where the EEOC would issue a cause determination.

The possible conformity issues with both the EEOC and HUD could result in the loss of contracts with these agencies. The current contract with EEOC is \$761,300, and the current contract with HUD is \$388,685. The funds from these two contracts comprise 66% of MCHR's budget and fund 21.7 of 31.7 FTE. The loss of these funds and employees would seriously compromise MCHR's ability to carry out its statutory mission properly, and a backlog of complaints would most likely develop.

If MCHR loses its federal contract from EEC, it would lose funding for 13 of its employees. MCHR currently has only 31.7, employees, so losing 42% of its employees would seriously compromise MCHR's ability to properly carry ut its statutory mission. A backlog of complaints would most likely develop.

The bill could also affect the ability of the Kansas City Human Relations Department (HRC) and the St. Louis Civil Rights Enforcement Agency (CREA) to contract with EEOC and HUD.

The fiscal impact was calculated by using the last EEOC contract amounts, which total \$761,300 and funds 13 FTE.

**Oversight** will range the fiscal impact of this proposal from \$0 (does not put Missouri out of compliance) to a loss of \$1,149,985 (if it is found by the EEOC that MCHR does not conform with the federal anti-discrimination laws EEOC enforces at the administrative level).

Officials at the **Department of Conservation** assume this proposal could have a negative fiscal impact of less than \$100,000 on their organization. The amount would be based on legal costs if a claim was brought against the Department for employment actions. The department must

ASSUMPTION (continued)

comply with Missouri Human Rights Law.

The officials from the **Attorney General's Office** assume any potential cost arising from this proposal can be absorbed with existing resources

Officials at the **City of Kansas City** assume this proposal will have a positive fiscal impact on their organization.

Savings would be experienced if the standard applicable to cases under the Act were made consistent with that applicable to federal cases brought under Title VII. Now, to reach a jury an employee need only suggest that a protected classification was a contributing factor or some consideration, rather than the City being motivated to discriminate based on a protected classification. Where a person's protected status is known (but it is not a motivating factor for any employment action) is a low threshold to reach the jury resulting in costs not related to explicit discrimination against an employee. By making the standard consistent with federal law employees will more confidently defend those cases in which a person's protected status was not a motivating factor for any employer action. Although each case may present different situations, the fact that attorneys fees are awarded if an employer was aware of a person's protected class but did not discriminate based on any motivating factor related to the status. These cases may commonly result in six figure awards for attorneys fees, with no relevance to the amount of money that might be offered or awarded to the employee. For example, an employee of Kansas City was awarded \$524 for pay that was claimed for not having access to out-of-class work for several days; the attorneys fees awarded by the Circuit Court were about \$350,000.

Officials at the **Missouri State University** assume this proposal will have a positive fiscal impact on their organization but the extent and amount unknown.

Officials at the **State Technical College of Missouri** assume this proposal will have an unknown fiscal impact on their organization.

**Oversight** will show an unknown positive fiscal impact from this proposal on colleges and universities.

Officials at the school districts of **St. Charles** and **Kansas City** each assume this proposal would have an unknown positive fiscal impact on their respective organizations.

Officials at the **Mississippi County** assume this proposal would have a negative fiscal impact on their organization if sued by an employee.

ASSUMPTION (continued)

Officials at the **Shell Knob #78** assume this proposal will have “some” fiscal impact on their organization.

**Oversight** will show an unknown positive fiscal impact from this proposal to Local Governments.

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

Officials at the county of **St. Louis** assume this proposal will not have a fiscal impact on their organization.

Officials at the Boards of Elections Commissioners of **Platte County** and **St. Louis County** each assume this proposal will not have a fiscal impact on their respective organizations.

Officials at the **Metropolitan College of Kansas City, University of Central Missouri, and University of Missouri** each assume this proposal will not have a fiscal impact on their respective organizations.

Officials at the school districts of **Avilla R-13, Concordia R-II, Eldon R-I, Kearney R-I, Kingston 42, Leeton R-10, Macon County R-IV, Malta Bend, Middle Grove, Parkway, Sarcoxie R-II, West Plains R-VII, and Warren County R-III** each assume this proposal will not have a fiscal impact on their respective organizations.

Officials at the following counties: Andrew, Atchison, Audrain, Barry, Bollinger, Boone, Buchanan, Callaway, 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, 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 board of election commissions: Kansas City Board of Election Commission, St. Louis City Board of Election Commission, Clay County Board of Election Commission, and Jackson County Board of Election Commission did not respond to **Oversight’s** request for fiscal impact.

ASSUMPTION (continued)

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

Officials at the following school districts: Arcadia Valley R-2, Aurora R-8, 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, Crawford County R-1, Crocker R-II, Delta C-7, East Carter R-2, East Newton R-6, 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, Kennett #39, King City R-1, Kirbyville R-VI, Kirksville, Laclede County R-1, Laredo R-7, Lee Summit, Lewis County C-1, Lindbergh, Lonedell R-14, Macon County R-1, Mehville, 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, 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, Scotland County R-I, Sedalia, Seymour R-2, Shelby County R-4, Sikeston, Silex, Slater, Smithville R-2, Special School District of St. Louis County, Spickard R-II, Springfield, St Joseph, St Louis, St. Elizabeth R-4, Sullivan, Tipton R-6, Valley R-6, Verona R-7, 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 2017 (10 Mo.)	FY 2018	FY 2019
<b>GENERAL REVENUE FUND</b>			
<u>Savings - OA - General Services</u>			
Legal Expenses	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>NET ESTIMATED EFFECT ON GENERAL REVENUE FUND</b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>

<u>FISCAL IMPACT - State Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
<b>CONSERVATION COMMISSION</b>			
<u>Savings</u> - Legal Fees	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>NET ESTIMATED EFFECT ON CONSERVATION COMMISSION</b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>
<b>ROAD FUND</b>			
<u>Savings</u> - MoDOT Legal Expenses	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>ESTIMATED NET EFFECT TO THE ROAD 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 Legal Expenses	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>ESTIMATED NET EFFECT TO 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> - MCHR Potential loss of federal EEOC and HUD money	\$0 or <u>(\$1,149,985)</u>	\$0 or <u>(\$1,149,985)</u>	\$0 or <u>(\$1,149,985)</u>
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>\$0 or (\$1,149,985)</u></b>	<b><u>\$0 or (\$1,149,985)</u></b>	<b><u>\$0 or (\$1,149,985)</u></b>
<u>FISCAL IMPACT - Local Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
<u>Savings</u> - Local Political Subdivisions - Legal Expenses	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>ESTIMATED NET EFFECT TO LOCAL GOVERNMENT</b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>



## 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 and age discrimination cases have the burden of proving these standards.

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 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.

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 Office of State Courts Administrator 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.

The act creates the "Whistleblower's Protection Act." Employers are barred from discharging or retaliating against the following persons:

- a person who reports an unlawful act of the employer or its agent;

### FISCAL DESCRIPTION (continued)

- 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, or regulation promulgated under statute;
- 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 where the statute or regulation does not provide for a private right of action.

The employee's protected conduct shall be the motivating factor in the employer's discharge or retaliation.

Employees have a private right of action for actual but not punitive damages under the act unless another private right of action for damages exists under another state or federal law. Remedies allowed are backpay, reimbursement of medical bills incurred in treatment of mental anguish, and double those amounts as liquidated damages if it is proven by clear and convincing evidence that the employer's conduct was outrageous because of the employer's evil motive or reckless indifference to the rights of others. The liquidated damages shall be treated as punitive damages and backpay and reimbursement shall be treated as compensatory damages in a bifurcated trial if requested by a party.

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

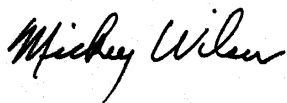
### SOURCES OF INFORMATION

Office of Administration - General Services  
Department of Conservation  
Office of Administration - Personnel  
Office of Attorney General  
Office of State Courts Administrator  
Department of Transportation - Government Relations  
Missouri State University  
State Technical College of Missouri  
City of Kansas City  
Mississippi County  
St. Louis County  
Board of Elections Commission  
    Platte County  
    St. Louis County

SOURCES OF INFORMATION (continued)

Metropolitan College of Kansas City  
University of Central Missouri  
University of Missouri  
School Districts

St. Charles  
Kansas City  
Avilla R-13  
Concordia R-II  
Eldon R-I  
Kearney R-I  
Kingston 42  
Leeton R-10  
Macon County R-IV  
Malta Bend  
Middle Grove  
Parkway  
Sarcoxis R-II  
Shell Knob #78  
West Plains R-VII  
Warren County R-III



Mickey Wilson, CPA  
Director  
February 1, 2016

Ross Strobe  
Assistant Director  
February 1, 2016