

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3121-01
Bill No.: SB 682
Subject: Employees-Employers; Labor and Management; Salaries
Type: Original
Date: January 7, 2020

Bill Summary: This proposal modifies provisions relating to employment practices based on gender.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Other State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Colleges and Universities	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on Other State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
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 2021	FY 2022	FY 2023
Local Government	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Attorney General's Office (AGO)** anticipate a fiscal cost for this proposal to range from \$0 to unknown. This proposal has the potential to greatly increase the litigation costs of the State of Missouri related to employment sex discrimination cases. As this legislation overlaps with the Missouri Human Rights Act under section 213.070, it would allow claims to be brought without the benefit of an investigation by the Human Rights Commission to determine the facts of the case. This bill also adjusts the time limit within which an action can be filed from six months to two years after a violation. These two factors could increase the number of claims the AGO has to defend for the State of Missouri.

This bill also increases the total compensation that claimants may receive following favorable judgements by allowing compensatory damages up to twice the wages determined to be owed the claimant, punitive damages, and court costs and attorney's fees. These provisions have the potential to greatly increase the costs of employment sex discrimination cases defended by the State of Missouri.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume the proposed legislation creates a new method through which persons working for small businesses/employers with fewer than six employees could raise claims of gender discrimination as they relate to pay. The number of such claims to be filed is unknown, and current FTE could likely absorb any additional work this proposal would cause.

Officials from the **Office of Administration (OA)** assume sections 290.410 and 290.440 of this proposed legislation would create claims and damages that could potentially be asserted against the state or other entities covered by the Legal Expense Fund (LEF). If such claims were successfully pursued, they could result in additional costs to the LEF. However, the amount of the potential costs resulting from this proposal cannot be reasonably estimated as this language creates new legal standards, subject to judicial interpretation, and there is no readily available information that could assist in forming a rational basis for estimating costs. 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.

Officials from the **University of Missouri** assume in the event that this proposed statute were interpreted to apply to the University, it would create a new potential source of liability for the University, however, it is not possible to identify a significant fiscal impact at this time.

ASSUMPTION (continued)

Officials from the **State Technical College of Missouri** assume the proposal will have no fiscal impact on their organization.

Oversight notes most LEF costs are reimbursed from the General Revenue Fund (GR). GR has paid for the majority of payments from the LEF since payments on LEF cases for agencies with designated reimbursable funds have been relatively small. According to Office of Administration - Risk Management (OARM), broader budget authority to transfer from Federal and Other Funds beginning in FY 18 allowed for an increase of percentage of payments from Federal and Other Funds. Table 1 below shows LEF costs broken down for GR versus Federal Funds/Other Funds.

Table 1: Legal Expense Fund payments from GR and Fed/Other

	GR	Fed/Other	Total	GR %	Fed/Other %
FY 15	\$9,197,461	\$661,555	\$9,859,016	93%	7%
FY 16	\$11,386,339	\$600,489	\$11,986,828	95%	5%
FY 17	\$19,983,784	\$4,217,582	\$24,201,366	83%	17%
FY 18	\$18,625,000	\$9,649,513	\$28,274,513	66%	34%
Total	\$59,192,584	\$15,129,139	\$74,321,723	80%	20%

Source: Office of Administration

OARM provided Oversight with claim payment data from FY 2015 to FY 2018. Based on the data provided, Oversight estimated the number of claims and amount paid by claim type shown in table 2 below. Motor vehicle claims accounted for 69% of the total number of claims but only 11% of the value of claims. Claims related to discrimination accounted for 8% of the total number of claims but 25% of the value of claims paid.

ASSUMPTION (continued)

Table 2: Payment data **by type** of claim (FY 15-18)

Type of Claim	Number of Claims	Cost of Claims
Discrimination	67	\$19.6 million
Wrongful Death	5	\$11.9 million
Motor Vehicle	583	\$8.6 million
Medical Malpractice	10	\$8.3 million
STL & KC Police	5	\$5.4 million
Tort	10	\$4.6 million
Harassment	3	\$4.3 million
Personal Injury	10	\$3.6 million
Class Action Law Suit	1	\$2.6 million
Dangerous Condition of Property	96	\$1.6 million

Source - OARM: Includes motor vehicle and dangerous condition of property claims.

Oversight notes, based on the data provided by OARM, the average payment for discrimination claims was approximately \$292,500 (67 discriminations claims/\$19.7 million in discrimination claims paid by the LEF). If this proposal resulted in one additional claim per year at a similar payout, this could potentially cost the state \$292,500 in additional liability claims. If this proposal resulted in 10 additional claims per year, this could potentially cost an estimated \$2,925,000 per year. However, Oversight notes the cost of any potential liability would be entirely dependent of the number of claims and circumstances of the claims filed; therefore the cost is ultimately unknown.

Oversight does not have any information to the contrary in regards to OA’s assumption; therefore, Oversight will range the fiscal impact from \$0 (does not increase litigation) to an “Unknown” cost (increased claims related to practices based on gender) on the fiscal note.

ASSUMPTION (continued)

Officials from the **Department of Transportation, Missouri Department of Conservation, and Office of State Courts Administrator** each assume the proposal will have no fiscal impact on their respective organizations.

Officials from **Kansas City** assume this proposal could have a negative fiscal impact as it could increase Kansas City's exposure to liability.

Oversight does not have any information to the contrary in regards to Kansas City's, assumption; therefore, Oversight will range the fiscal impact to local governments from \$0 (does not increase litigation to local governments) to an "Unknown"(increased claims related to practices based on gender) on the fiscal note.

Officials from the **St. Louis County and City of Springfield** assume the proposal will have no fiscal impact on their organization.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
GENERAL REVENUE			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT TO GENERAL REVENUE FUND	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
OTHER STATE FUNDS			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT TO OTHER STATE FUNDS	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2021 (10 Mo.)	FY 2022	FY 2023
FEDERAL FUNDS			
<u>Cost</u> - Potential increase in claims	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT TO FEDERAL FUNDS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
LEGAL EXPENSE FUND (0692)			
<u>Transfer In</u> - from GR, Federal, and Other State Funds	\$0 to <u>Unknown</u>	\$0 to <u>Unknown</u>	\$0 to <u>Unknown</u>
Potential increase in claims			
Transfer Out - payment of discrimination claims	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT TO THE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
COLLEGES AND UNIVERSITIES			
<u>Cost</u> - Colleges and Universities Potential increase in claims	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
LOCAL POLITICAL SUBDIVISIONS			
<u>Cost</u>	\$0 to	\$0 to	\$0 to
Potential increase in claims	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

FISCAL IMPACT - Small Business

Small businesses will be required to comply with revised sections. If a small business fails to comply, they could be held liable for those actions as a result of this proposal.

FISCAL DESCRIPTION

The proposed legislation modifies provisions relating to employment practices based on gender.

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
Office of Administration
Missouri Department of Conservation
Department of Transportation
Office of State Courts Administrator
Attorney General's Office
City of Kansas City
St. Louis County
City of Springfield
University of Missouri
State Technical College of Missouri



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