

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0583S.01I
Bill No.: SB 81
Subject: Civil Rights; Employees-Employers
Type: Original
Date: January 6, 2021

Bill Summary: This proposal modifies provisions governing unlawful discriminatory practices.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue	Could exceed (\$76,822)	Could exceed (\$82,993)	Could exceed (\$83,814)
Total Estimated Net Effect on General Revenue	Could exceed (\$76,822)	Could exceed (\$82,993)	Could exceed (\$83,814)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Other State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Legal Expense Fund*	\$0	\$0	\$0
College and Universities	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 pages.

*Transfers in and Payments out net to zero.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
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 2022	FY 2023	FY 2024
General Revenue	1 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	1 FTE	1 FTE	1 FTE

☐ 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 2022	FY 2023	FY 2024
Local Government	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume the proposal creates an additional legal standard for what constitutes discrimination. It is assumed that implementation of the lower burden of proof standard set forth in HB 350 from 2019 session, -Note: SB 81 - the current bill, (acts "based on" rather than "because of" discriminatory intent) would result in additional Missouri Human Rights Act claims being made against state agencies and that such litigation would have a greater likelihood of resulting in additional judgments or settlements.

The Missouri Commission on Human Rights (MCHR) contacted several states that already include sexual orientation and gender identity in protected status including Illinois, Iowa, Colorado, and Minnesota; as well as the Federal Equal Employment Opportunity Commission (EEOC) to gather statistics regarding complaints filed on sexual orientation/gender identity. Based on 2017 data, an average of 6.3% of total complaints of discrimination were due to sexual orientation or gender identity.

Using this assumption, the projected number of additional complaints for FY 2021 is estimated at 88. $(1,391 \text{ [FY 2018 total complaints less housing cases]} \times 6.3\% = 87.633)$. The minimum number of investigations completed per Human Relations Officer per year is 96. Using this estimate, the MCHR has determined it would require one additional Human Relations Officer I (Range 6, \$47,071) to investigate these cases and provide educational outreach to employers, employees, and the general public. Standard expense and equipment, along with travel costs are included in this estimate.

Oversight notes the DOLIR has stated the proposal would have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a DOLIR's impact on the fiscal note.

In response to similar proposal, HB 1527 (3726-01) (2020), Officials from the **Office of Administration (OA)** assumed this proposed legislation would create additional categories of claims that could potentially be asserted against the state or other entities covered by the Legal Expense Fund. If such claims were successfully pursued, they could result in additional costs to the Legal Expense Fund. 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.

ASSUMPTION (continued)

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

Table 2: Payment data by type of claim

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

ASSUMPTION (continued)

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.

Officials from the **Attorney General's Office (AGO)** assume that this proposal will have \$0 to unknown negative fiscal impact because the potential increase in civil litigation cases.

Oversight notes the AGO has stated the proposal would have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect an AGO's cost on the fiscal note.

Officials from the **Office of the Secretary of State Officials (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000.

The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could require additional resources.

Officials from the **City of Hale** assume the proposal would have negative fiscal impact on their organization.

Officials from the **City of Kansas** assume the proposal could have a negative fiscal impact on the City because it could increase Kansas City's exposure to liability.

ASSUMPTION (continued)

Oversight does not have any information to the contrary in regards to the City of Hale and Kansas City’s assumptions; therefore, Oversight will range the impact from \$0 (does not increase costs) to an “Unknown” (does increase costs related to sexual orientation and /or gender identity lawsuits) on the fiscal note.

Officials from the **Missouri Department of Conservation, Missouri Department of Transportation, and Office of the State Courts Administrator, City of Ballwin, City of Corder, City of O’Fallon, City of Saint Louis – Budget Division, University of Missouri, Northwest Missouri State University, State Technical College, and University of Central Missouri** each have stated the proposal would not have direct fiscal impact on their respective organizations.

Oversight only reflects the responses that we have received from state agencies, colleges, universities and political subdivisions; however, other state agencies, colleges, universities, school districts, cities, and counties were requested to respond to this proposed legislation but did not. A general list of entities in our database is available upon request.

BB:LR:OD

<u>FISCAL IMPACT – State Government (continued)</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
OTHER STATE FUNDS			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO OTHER STATE FUNDS	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
FEDERAL FUNDS			
<u>Cost</u> - Potential increase in claims	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO FEDERAL FUNDS	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
LEGAL EXPENSE FUND (0692)			
<u>Transfer In</u> - from GR, Federal, and Other State Funds (Potential increase in claims)	\$0 to <u>unknown</u>	\$0 to <u>unknown</u>	\$0 to <u>unknown</u>
Transfer Out - payment of discrimination claim	\$0 to (unknown)	\$0 to (unknown)	\$0 to (unknown)
ESTIMATED NET EFFECT TO THE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT – State Government (continued)</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
COLLEGES AND UNIVERSITIES			
Cost - 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	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
LOCAL POLITICAL SUBDIVISIONS			
Cost Potential increase in discrimination claims	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>

FISCAL IMPACT – Small Business

Small businesses will be required to comply with the revised sections in employment and public accommodation. If a small business fails to comply, they could be held liable for those actions, incurring additional costs to defend against such discrimination claims.

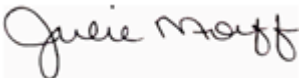
FISCAL DESCRIPTION

This act prohibits discrimination based upon a person's sexual orientation or gender identity. Such discrimination includes unlawful housing practices, denial of loans or other financial assistance, denial of membership into an organization relating to the selling or renting of dwellings, unlawful employment practices, and denial of the right to use public accommodations.

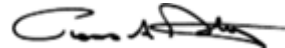
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Office of the Secretary of State
Attorney General's Office
Missouri Department of Conservation
Missouri Department of Transportation
Office of the State Courts Administrator
City of Ballwin
City of Corder
City of O'Fallon
City of Saint Louis – Budget Division
City of Kansas City
City of Hale
University of Missouri
Northwest Missouri State University
State Technical College
University Of Central Missouri



Julie Morff
Director
January 6, 2021



Ross Strobe
Assistant Director
January 6, 2021