

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1743-03
Bill No.: Perfected HCS for HB 1019
Subject: Employees - Employers; Housing; Public Buildings
Type: Original
Date: April 8, 2015

Bill Summary: This proposal modifies provisions relating to unlawful discriminatory practices.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	Unknown	Unknown	Unknown
Total Estimated Net Effect on General Revenue	Unknown	Unknown	Unknown

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Conservation Commission Fund	Unknown	Unknown	Unknown
Road Fund	Unknown	Unknown	Unknown
Universities and Colleges	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown	Unknown	Unknown

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Federal Funds	\$0 or (\$1,026,672)	\$0 or (\$1,026,672)	\$0 or (\$1,026,672)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$1,026,672)	\$0 or (\$1,026,672)	\$0 or (\$1,026,672)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
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 2016	FY 2017	FY 2018
Local Government	Unknown	Unknown	Unknown

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume this proposal amends the Missouri Human Rights Act (the Act) in several respects, including changing the standard to prove discrimination in all cases in §213.010(2) and (6) and §213.111.6; and changing the definition of "employer" at §213.010(8). Section 213.101.2 through .5 would direct the courts to rely on federal cases (particularly *Price Waterhouse v. Hopkins* and *McDonnell-Douglas Corp v. Green*) under Title VII, the ADEA and the ADA when interpreting cases under Chapter 213. It would also limit the damages that a victim of discrimination could be awarded in §213.111.4. It would also exempt the State of Missouri or any of its political subdivisions from paying punitive damages to victims of discrimination.

DOLIR officials state this legislation has been submitted to both the Equal Employment Opportunity Commission (EEOC) and Housing and Urban Development (HUD) for their analysis. Based on reviews of similar bills by these agencies, conformity issues are likely, and the Missouri Commission on Human Rights (MCHR) could lose the ability to contract with EEOC and HUD. The current contract with EEOC is \$751,750, and the current contract with HUD is \$274,922. 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.

DOLIR states this proposal 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 total estimated fiscal impact is (\$1,026,672) federal funds and (21.7) FTE.

Oversight will range the fiscal impact of this proposal from \$0 (does not put Missouri out of compliance) or a loss of \$1,026,672 (if it is found by the EEOC that MCHR does not conform with the federal anti-discrimination laws EEOC and HUD enforces at the administrative level).

Officials from the **Office of Administration - General Services Division** state 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 this legal standard creates a somewhat higher burden on plaintiffs under the MHRA. This higher burden may result in either fewer MHRA claims being made against 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.

ASSUMPTION (continued)

However, the amount of the potential savings resulting from this proposal cannot be reasonably estimated as this 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.

In response to a similar proposal (SB 38) from this year, officials from the **City of Kansas City** assumed the savings to the City from this bill, while difficult to quantify, will be enormous. Currently, the City has been placed in the position where it has to settle many cases that it otherwise would defend through trial, because of the low standard of liability, the reluctance of courts to grant summary judgments in MHRA (Missouri Human Rights Act) cases, and the availability of punitive damages against the City. This bill would allow the City to get summary judgment (or at least have the threat of a summary judgment), avoid punitive damages, and limit actual damages. As an example, in a single case involving two plaintiffs that reached a verdict against the City several years ago, this bill would have resulted in a \$2,000,000 savings in damages (and that assumes the same finding of liability regardless of the change in liability standard and summary judgment potential).

ASSUMPTION (continued)

There could also be a potential cost to the City associated with this bill. Currently, the City has sovereign immunity over allegations of retaliation for whistle blowing, because that is a common law tort. Codification of that common law into the MHRA would make it applicable to the City. That said, the City has had few allegations of retaliation based on whistle blowing activity, and therefore, the City believes its costs will be greatly outweighed by the savings this bill will provide the City.

Officials from the **Office of Administration - Personnel Division** and the **Office of the State Courts Administrator** each assume the proposal will have no fiscal impact on their respective organizations.

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

In response to a previous version, officials from the **Missouri Department of Conservation** assume the proposal will have an unknown fiscal impact but likely less than \$100,000 on their agency. If a claim was brought against the department the department would have to pay legal cost for employment actions. The department must comply with Missouri Human Rights Law.

Officials from the **St. Louis County Directors of Elections**, the **Platte County Board of Elections**, the **Jackson County Election Board**, **Callaway County** and **St. Louis County** each assumed the proposal would have no fiscal impact on their respective organizations.

In response to a similar proposal (SB 38) from this year, officials from the **Missouri State University** stated if enacted, this bill would have a positive fiscal impact on the University. The specific amount and extent of which cannot be determined and quantified at this time.

In response to a similar proposal (SB 38) from this year, officials from the **Department of Transportation** assumed the proposal would have no fiscal impact on their organization.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
GENERAL REVENUE			
<u>Savings - OA -General Service</u> Legal Expenses	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
CONSERVATION COMMISSION FUND			
<u>Savings - MDC</u> Legal Expenses	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT TO THE CONSERVATION COMMISSION FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ROAD FUND			
<u>Savings - MoDOT</u> Legal Expenses	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT TO THE ROAD FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
UNIVERSITIES AND COLLEGES			
<u>Savings - Colleges and Universities</u> Legal Expenses	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT TO UNIVERSITIES AND COLLEGES	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

<u>FISCAL IMPACT - State Government</u>	FY 2016	FY 2017	FY 2018
(continued)	(10 Mo.)		

FEDERAL FUNDS

<u>Loss - MCHR</u>	\$0 or	\$0 or	\$0 or
Potential loss of federal EEOC and HUD money	<u>(\$1,026,672)</u>	<u>(\$1,026,672)</u>	<u>(\$1,026,672)</u>

ESTIMATED NET EFFECT ON FEDERAL FUNDS	\$0 or	\$0 or	\$0 or
	<u>(\$1,026,672)</u>	<u>(\$1,026,672)</u>	<u>(\$1,026,672)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2016	FY 2017	FY 2018
	(10 Mo.)		

LOCAL POLITICAL SUBDIVISIONS

<u>Savings - Local Political Subdivisions</u>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
Legal Expenses			

ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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FISCAL IMPACT - Small Business

This proposal could have a direct fiscal impact to small businesses to defend against alleged discrimination.

FISCAL DESCRIPTION

This bill changes the laws regarding unlawful discriminatory employment practices under the human rights and workers' compensation laws and establishes the Whistleblower's Protection Act.

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

L.R. No. 1743-03
Bill No. Perfected HCS for HB 1019
Page 8 of 8
April 8, 2015

SOURCES OF INFORMATION

Attorney General's Office
Office of Administration
Office of the State Courts Administrator
Department of Transportation
Department of Labor and Industrial Relations
Missouri Department of Conservation



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April 8, 2015

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