

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4338-01
Bill No.: SB 852
Subject: Employees - Employers; Housing; Public Buildings
Type: Original
Date: February 15, 2010

Bill Summary: 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 2011	FY 2012	FY 2013
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Federal Funds	(\$978,862)	(\$978,862)	(\$978,862)
Total Estimated Net Effect on <u>All</u> Federal Funds	(\$978,862)	(\$978,862)	(\$978,862)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on FTE	0	0	0

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 2011	FY 2012	FY 2013
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Labor and Industrial Relations** assume the fiscal impact was calculated by using the current EEOC and HUD contract amounts. The total for Missouri Commission on Human Rights current contract with HUD equals \$341,912. The current contract amount with EEOC is currently \$636,950. HUD has already indicated a compliance issue with the new language. The fiscal impact at this time is \$978,862.

Officials at the **Office of the Attorney General** assumes 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 **Office of Administration** assume that 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 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", except in age discrimination cases, where the standard would be that the adverse action would not have occurred but for the plaintiff's age. This bill would also remove individual liability for employees acting in the employer's interest. This would result in an unknown savings.

Officials at the **City of Kansas City** and the **Special School District** assume a positive impact on the City because of the cap on discrimination lawsuits.

Officials at the **Missouri State University** assume a potential savings as it appears that it would make it more difficult for employees to prevail in employment discrimination cases.

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

<u>FISCAL IMPACT - State Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
FEDERAL FUNDS			
<u>Loss - Department of Labor and Industrial Relations</u>			
EEOC and HUD contracts	<u>(\$978,862)</u>	<u>(\$978,862)</u>	<u>(\$978,862)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>(\$978,862)</u>	<u>(\$978,862)</u>	<u>(\$978,862)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
	<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 and in age discrimination cases, the standard is changed to encompass only discriminatory decisions that would not have occurred but for age. 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.

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.

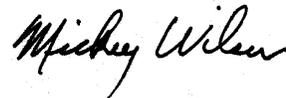
Damages awarded for employment cases under the MHRA shall not exceed back pay and interest on back pay and \$50,000 for employers with between 5 and 100 employees, \$100,000 for employers with between 100 and 200 employees, \$200,000 for employers with between 200 and 500 employees, or \$300,000 for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

The act abrogates all Missouri case law relating to exceptions to the employment at will doctrine. Employers shall not retaliate or discriminate against employees exclusively as a result of the fact that the employee refused to violate a statute, regulation, constitutional provision, ordinance, or common law at the request of someone employed by the employer who has direct or indirect supervisory authority. The same standard shall apply when employees report an illegal act of the employer. The act establishes caps for damages for such cases identical to those created for MHRA cases with the exception of back pay and interest on back pay which are not allowed.

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 Attorney General
Office of Administration
Missouri Western State University
Missouri Department of Transportation
City of Kansas City
East Central College
Parkway School District
City of Centralia
Metropolitan Community College
Cass County
Linn State Technical College
Missouri Department of Conservation
Office of the State Courts Administrator
University of Missouri
Northwest Missouri State University
St. Louis County
City of Raytown
University of Central Missouri
Missouri State University
Moberly Area Community College
Special School District



Mickey Wilson, CPA
Director
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